

1 **UNITED STATES DISTRICT COURT**
2 **SOUTHERN DISTRICT OF TEXAS**
3 **HOUSTON DIVISION**

4 UNITED STATES OF AMERICA * 4:15-CR-15-S
 * Houston, Texas
5 VS. *
 * 9:05 a.m.
6 RICHARD ARTHUR EVANS, M.D. * July 18, 2016

7 **JURY TRIAL**

8 **Volume 5**

9 **BEFORE THE HONORABLE KENNETH M. HOYT**
10 **UNITED STATES DISTRICT JUDGE**

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I N D E XWITNESSPAGE

KIMBERLY RICHARDSON

CONTINUED CROSS-EXAMINATION BY MR. DAVIDSON

1057

REDIRECT EXAMINATION BY MR. JOUBERT

1096

GRAVES OWEN

DIRECT EXAMINATION BY MR. JOUBERT

1116

CROSS-EXAMINATION BY MS. BOLEN

1185

REDIRECT EXAMINATION BY MR. JOUBERT

1243

DAVID DEVIDO

DIRECT EXAMINATION

1254

1030

1 Government Exhibit 87 admitted

1268

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1 **(The following was held out of the presence of the jury)**

2 THE COURT: I need to take up a matter with
3 the lawyers before we get started. So y'all were stuck in
4 traffic holding up the traffic out there. I don't need to
09:05:50 5 take it up here -- well, yeah, you can come up to the
6 bench. That might be appropriate. But I think it will be
7 just as well, if I spoke with you, y'all just come closer
8 so I don't have to speak so loudly. Where is your witness?
9 Outside?

09:06:03 10 MR. JOUBERT: She's here, Your Honor. She just
11 went outside.

12 Judge, if I may anticipate to --

13 THE COURT: Let me tell you that you don't have
14 to, just in case. I'm getting ready to discuss and talk
09:06:29 15 about the expert witness report, and what the Court will
16 permit. Okay? Or have y'all worked something out?

17 MR. JOUBERT: Well, I gave them the first 20 or
18 30 pages, Your Honor, yesterday evening, if that's what
19 you're going to get to.

09:06:44 20 THE COURT: I figure you gave them basically
21 what they need to know that there's a report, but I need to
22 know -- let me ask you, maybe I'll start it this way. What
23 is the doctor's opinion that you have requested him to
24 give?

09:06:57 25 MR. JOUBERT: His opinion essentially is that

1 Dr. Evans was not practicing medicine.

2 THE COURT: I saw a section in there having to
3 do with a pill mill or something like that.

09:07:09

4 MR. JOUBERT: That was part of the first 32
5 pages.

6 THE COURT: I understand. But is that his
7 conclusion, that he was actually operating "a pill mill"?

09:07:23

8 MR. JOUBERT: I do not think so, Your Honor, I
9 think that's actually to guide me on what to look for in
10 the pill mill.

11 THE COURT: I see.

12 So the bottom line -- is there a portion of the
13 report that I ought to look to or that would be the
14 summary of whatever his --

09:07:34

15 MR. JOUBERT: Yes, Your Honor, there is.

16 MS. BOLEN: Top of Page 49 of that expert
17 report.

18 THE COURT: 49?

19 MS. BOLEN: Yes, sir.

09:07:46

20 THE COURT: Okay. I think that's what was
21 called the summary. Yeah, that's why I was asking. I
22 thought that's probably what it was or is.

23 MR. OLLISON: I got it.

09:08:02

24 THE COURT: All right. And is it what would be
25 represented at Page 49, represented on Page 49?

1 MR. JOUBERT: That is a summary, Your Honor,
2 yes, sir.

3 THE COURT: Well, I mean is that, that's what
4 he would be speaking about --

09:08:15 5 MR. JOUBERT: Yes.

6 THE COURT: -- when you ask you questions.
7 That's basically his opinion?

8 MR. JOUBERT: Yes, Your Honor.

9 THE COURT: Okay. What I see included in this
09:08:22 10 report are treatises, perhaps papers that he's written,
11 papers that other men or people who -- other doctors and
12 scientists who might have treated or written opinions. I
13 see him giving us kind of a background to what he and his
14 educational experience and knowledge would "rely upon" in
09:08:57 15 making and formulating his opinion -- his educational
16 experience is basically and what's going on and what's
17 being taught out in the marketplace.

18 Then I saw that you did, I gather, a summary or
19 analysis as to each of the 15 or 17?

09:09:15 20 MR. JOUBERT: That's correct.

21 THE COURT: About 17 patients, all of whom
22 would not -- you're not presenting evidence on in this
23 case; right?

24 MR. JOUBERT: Correct, Your Honor. Just so the
09:09:26 25 Court will know he looked at another one over the weekend.

1 THE COURT: Okay. But his analysis of the
2 paperwork associated is without "the benefit of an
3 examination of the individual patients." Agree?

4 MR. JOUBERT: That's correct, Your Honor.

09:09:39

5 THE COURT: All right. So here's my point,
6 here's the point of my bringing this to your attention. I
7 will not permit cross-examination regarding whatever he
8 might have looked at in terms of his -- in terms of his
9 educational experience. If he's qualified to give an

09:09:59

10 opinion and you don't challenge that, have not challenged
11 it, then if he's read treatises or a hundred treatises and
12 whether he's presented them and said these are some papers
13 that speak to these issues, not an area for
14 cross-examination because his opinion -- are you going to
15 be questioning?

09:10:17

16 MS. BOLEN: Yes, sir.

17 THE COURT: His opinion is limited to the
18 documents and when I say documents, I mean the medical
19 paperwork that has been presented to him that would be a
20 part, I gather, of Dr. Evans' records and documents. So
21 that's the basis of his opinion; the fact that he has
22 education and he lies upon other treatises may be relevant
23 only if there are some or a treatise that contradicts what
24 he's saying. And to that extent he can be impeached on by
25 any -- he can impeach in question, let me say it that way,

09:10:54

1 impeaching questions can be asked concerning other
2 treatises that disagree with him or disagree with his
3 opinion.

4 I will not permit, however, a battle
09:11:08 5 between the lawyer and the witnesses, or lawyers and the
6 witnesses about which of these treatises is right or wrong,
7 or how a particular doctor writes a book and he has not
8 read the book or he has read the book and he is certainly
9 if he has a different opinion, you can ask him if his
09:11:30 10 opinion is different than doctor whomever. I don't have a
11 problem with impeachment. I do have a problem, obviously,
12 with the bulk of this because it's really not an opinion
13 regarding the patients, it's really more of his explanation
14 of all of the -- not all, really, it's probably just some
09:11:49 15 of the work that he's looked at to reach his conclusion.
16 Are we on the same page?

17 MR. JOUBERT: Yes, Your Honor.

18 MS. BOLEN: Yes, sir.

19 MR. JOUBERT: If it please the Court, we
09:11:58 20 mentioned Page 49. I think Page 50 actually has the word
21 "conclusions" on it, of his summary.

22 THE COURT: Here's where I'm going with this.
23 It should not take you more than an hour to get his opinion
24 into evidence. It doesn't matter how many books he's read.

09:12:13 25 MR. JOUBERT: Okay, Your Honor. I'm glad you

1 brought that up. I had hoped to go through certain patient
2 files with him.

09:12:26

3 THE COURT: You're not going to be able to go
4 through patient files. He is not -- why would you want to
5 go through patients' files?

6 MR. JOUBERT: Simply --

7 THE COURT: He has an opinion that's global,
8 that reaches all of this, doesn't he?

09:12:32

9 MR. JOUBERT: Yes, Your Honor, but I think I
10 have to ask him if he reviewed certain patient files in
11 order to be here today.

09:12:48

12 THE COURT: Sure. But you don't have to go
13 into the -- all of that stuff is basically hearsay to him
14 in this case. What specifically, individually in each of
15 these files and I'm talking about what expert witnesses do.
16 They go look at hundreds, maybe even thousands of pages of
17 documents, but it is not for the lawyers to say well, I
18 want to go through 500 of those pages with you and here are
19 the individual things that we need to go through. What

09:13:06

20 you're talking about is a -- seems to me, is a series of
21 questions that would be associated with his lack of use of
22 medical skills, his lack of use of doctor skills. In other
23 words, if you did A, B, C, D, E and F, if that's what's --
24 did you find that in the record? And if he says no, then

09:13:26

25 would that be appropriate and necessary in order for you to

1 be -- for him to be "seriously or treating these patients"?
2 See? Because the standard has nothing to do with what is
3 in the file. It has to do with what's not in the file.

09:13:41

4 MR. JOUBERT: That's correct, Your Honor. And
5 that's what he concluded in his summary.

09:13:59

6 THE COURT: Right. And so, I don't want to get
7 bogged down in the question of what it is in each of these
8 individual patient files. The jury has that record more
9 than they need. They should not really in most instances
10 have these records. What you're doing is saying that you
11 reviewed these records because that's what you would do.

09:14:13

12 Have you read the files that have been provided to you for
13 these 17 or 18 patients? I have. And, Jeff, what is your
14 opinion? And he'll tell you. He can do that in five
15 minutes, then if there are some specific things that bear
16 upon his -- the lack of what is the -- whatever the
17 standard is, that you're seeking, if there are things
18 specifically that are missing or absent from the files, and
19 from what he reviewed, that he would expect to see in there

09:14:35

20 in order to treat the patient the way the patient was
21 treated, then that becomes relevant. Not so much what was
22 in there, like: We saw him five times; we did this; we did
23 that. That's so much detail that the jury will get lost,
24 and then the question becomes: Well, he treated this one

09:14:54

25 differently than he treated the other will one. So does

1 that mean that maybe this is okay and that's not okay?

2 That's not proper examination, because he
3 is looking at them individually, and he's looking at them
4 globally. And what I'm saying is that I am not interested
09:15:12 5 in hearing examination or cross-examination questions
6 regarding the details of each of these files. I'm not
7 even sure -- let me ask, are these files in evidence?

8 MR. JOUBERT: Yes, Your Honor -- well --

9 THE COURT: They're not in evidence.

09:15:32 10 MR. JOUBERT: I'm sorry. Some of them, but not
11 all of them.

12 THE COURT: Well, some portions having to do
13 with history and some of the notes, et cetera. I'm not
14 sure what all is in there because, let's say a file is a
09:15:44 15 hundred pages of one patient, that -- that hundred pages
16 can't be relevant to whether or not -- I mean, it could be
17 relevant in an overall view, but you cannot get bogged down
18 in the individual questions regarding whether or not there
19 is some piece of paper that should be in there that would
09:16:04 20 make this okay.

21 MR. JOUBERT: Yes, Your Honor.

22 THE COURT: Or it's not okay.

23 MR. JOUBERT: But as the Court has pointed out,
24 of course, we're also interested in what's not in the
09:16:13 25 files. And in order to establish that, we have to ask

1 questions about with is in the file. And --

2 THE COURT: No, you don't. No, you don't.

3 Because what's not in the file is evidentiary. It doesn't
4 matter what's in there at that point.

09:16:25 5 MR. JOUBERT: When you say "evidentiary" --

6 THE COURT: What's not in the file is the
7 evidence. What has not been done is the evidence, or what
8 was not being done is the evidence based upon the
9 indictment that you charged. Not what's in there. Unless
10 what's in there is convicting, meaning you gave this person
11 50 milligrams of something and that would be illegal.

12 MR. JOUBERT: But, Your Honor --

13 THE COURT: That's not what's in the file.

14 MR. JOUBERT: Respectfully, I just have to ask
09:16:55 15 the question because this kind of hit squarely on some of
16 the points that I planned to cover with the expert. Do you
17 remember the testimony on Friday concerning Samantha
18 Gardner?

19 THE COURT: Yes.

09:17:05 20 MR. JOUBERT: Do you remember the certain pages
21 in the file that talked about her having wounds in her
22 hand, and the fact that a letter was read that her sister
23 called in saying she was injecting oxycodone?

24 THE COURT: What's that got to do with whether
09:17:18 25 or not he has an opinion about the doctor's practice?

1 MR. JOUBERT: Well, if it please the Court, I
2 believe that there's a page in the file that talks about
3 that doctor seeing that patient within a day or two.

4 THE COURT: Yeah, the jurors heard that.

09:17:32

5 MR. JOUBERT: And also the doctor's notes and
6 conclusion about what he did and the way he handled that
7 matter.

8 THE COURT: Why would that detail be important?

9 MR. JOUBERT: Because it's --

09:17:40

10 THE COURT: What he did?

11 MR. JOUBERT: Because it goes to show again
12 what he did not do, Judge, as you said.

13 THE COURT: No, that doesn't show what he did
14 not do. What that shows is what he did. It seems to me
15 that if I were a doctor and I wanted to answer the question
16 whether or not I have an opinion about the doctor's
17 treatment, I'd want to ask whether or not if somebody is
18 injecting drugs, whether or not that's a red flag for you.
19 And then how would you handle that red flag in your

09:18:04

20 practice? And did you see evidence in the file of not --
21 that not happening? That's the appropriate, that's the
22 approach, because when you reduce it to individualized
23 patient files, that is the details of it, it seems to me
24 what you're doing is you're saying you're going to prove

09:18:22

25 every individual -- you're going to have to prove every

1 individual, what's not handled appropriately by the
2 specifics in the file. And what your doctor should have
3 done is looked at each of these files and been able to
4 say -- and be able to say I looked at all of these files
5 and none of them are right.

09:18:43

6 MR. JOUBERT: Well, he'll come close to that,
7 but he will.

8 THE COURT: Well, if some of them are not right
9 then they should not be a part of the evidence. I mean, if
10 any of them meet the standards, then we shouldn't be
11 presenting evidence on it.

09:18:52

12 MR. JOUBERT: No, but I'm trying to agree, with
13 it, Judge, that he did look at the files and he will say
14 where it was not right.

09:19:02

15 THE COURT: Okay.

16 MR. JOUBERT: But by way of saying what's not
17 right in order to get there I think I have to ask him
18 sometimes well, what did happen.

19 THE COURT: I'll be concerned about that only
20 to the extent that it seems to me that when you're
21 presenting expert evidence you're not trying to prove the
22 details behind -- you're trying to disprove or prove the
23 fact that those details are not -- are insufficient. And
24 certainly I can understand where there may be some specific
25 instance where a question regarding: What do you do with a

09:19:11

09:19:31

09:19:46 1 patient who is shooting up every day? But you don't have
2 to associate that with any particular file, necessarily.
3 Because there's a standard of treatment that is associated
4 with the treatment that you should be giving. What do you
5 do with a patient where something is happening? There's a
6 standard of care and it doesn't matter whether it's
7 Samantha or Josephine, or whoever it is. That's my
8 concern.

09:19:59 9 So you jumped that when I said you should
10 be able to do this in an hour. So that means that you plan
11 on spending a day with this witness?

12 MR. JOUBERT: No, Your Honor.

13 THE COURT: How much time do you think you
14 need? Because I'm going to limit the defense. I'm not
09:20:09 15 going to just let you-all run over the jury and cross every
16 trail that you think is -- this is not a fact witness, this
17 is an expert witness. And he is not -- I'm not going to
18 permit him to get lost in the details.

19 MR. JOUBERT: Your Honor, and that's my concern
09:20:24 20 too. I don't plan to get lost in the details. I thought
21 it might take us about two hours. I'll cut it down to less
22 than that and try to get right to the point.

23 THE COURT: Let me ask opposing counsel. Why
24 can't you cross-examine him in an hour? You know what he's
09:20:37 25 going to say.

1 MS. BOLEN: I think I have had some pretty
2 quick cross-examinations, and I don't have a problem with
3 it. My concern is that: One, obviously this is a criminal
4 case --

09:20:47

5 THE COURT: That's right.

09:21:01

6 MS. BOLEN: -- and that we need to be very
7 careful about using the standard language because it's not
8 civil, it's not negligence, it's not anything like that. I
9 am concerned that as -- and I will be happy to provide some
10 cases if the Court wishes. The issue here is whether or
11 not this doctor, Dr. Evans --

12 THE COURT: Right.

09:21:17

13 MS. BOLEN: -- abandoned his role as a medical
14 professional, not whether he did something as good as any
15 of the experts would have done it or anything like that,
16 and so that's one of my concerns is that we are very
17 careful with that language.

18 Number two, I'm a little bit concerned
19 based on the summary information of Dr. Owen's report.

09:21:31

20 THE COURT: Well, I'm not going to get into the
21 details of that.

22 MS. BOLEN: I'm just concerned about the issue
23 of intent, as an expert not testifying about a doctor's
24 intent.

09:21:37

25 THE COURT: None of this report is coming into

1 evidence.

2 MS. BOLEN: I understand that. But verbally
3 out of his mouth.

4 THE COURT: Okay.

09:21:42

5 MS. BOLEN: This professional, Dr. Owen, has
6 testified before. I'm very familiar with his testimony.

7 THE COURT: Okay.

8 MS. BOLEN: And it tends to get close to
9 speaking to the issue of intent. There are several bullet

09:21:53

10 points on here where Dr. Owen has bracketed willful
11 blindness, for example, bullet point Number 2 on Page 49.

12 THE COURT: I see that.

13 MS. BOLEN: There's a couple of those like
14 that, Your Honor, and I believe the law is that the expert
15 can testify that his opinion, you know, how he arrived at
16 it, but he can't comment on what he thinks the defendant --

09:22:06

17 THE COURT: Well, let me ask you, are you
18 planning to submit an instruction, are you planning to
19 submit some instruction deliberate ignorance or willful?

09:22:21

20 MR. JOUBERT: Yes, Your Honor.

21 THE COURT: So that's an ultimate issue,
22 though, but not the doctor that testified as to what
23 constitutes that by definition.

24 MR. JOUBERT: I believe that Ms. Bolen
25 accurately stated that what's at issue is the doctor's

09:22:35

1 intent, and we've proved that in a number of ways of which
2 one may be willful blindness.

3 THE COURT: I understand that, but the doctor
4 that is testifying cannot testify that this was willful
5 blindness. This was deliberate blindness on the part of
6 Dr. Evans. He can always testify that he should have
7 known, or because this is the standard or this is -- he
8 ignored this. I mean, there are words that can be used
9 that leaves a jury to conclude or not that there was

10 "willful blindness" that is, deliberate ignorance on the
11 part of Dr. Evans in his treatment of these patients. One
12 example may be, for example, with Samantha, you know, when
13 a person sees the needle marks, assuming that that's what
14 they looked like, you could say: Well, what did that tell
15 you, doctor? And he can tell you what that means. And if
16 a doctor ignores that, does that mean the doctor is being
17 negligent or not negligent, that's not the right term. Is
18 the doctor abandoning his -- the standard of care when he
19 fails or if he did, to do whatever he did, without saying
20 willful blindness. That's all I'm saying.

21 I'm trying to get my timeframe right.
22 Hour and a half? Hour and a half and you get an hour? How
23 long?

24 MS. BOLEN: I'm sure we can do it.

25 THE COURT: How long is your witness going to

1 take?

2 MS. BOLEN: About an hour, Your Honor.

3 THE COURT: Not an hour. Okay. Because he
4 is -- his purpose -- or one of them anyway, purpose is to
5 rebut.

09:24:06

6 MS. BOLEN: To refute, yes, sir.

7 THE COURT: Yeah.

8 MS. BOLEN: And to make sure that there's an
9 understanding of the standard, the reference of the

09:24:12

10 standard. And I believe it's Chapter 170. As many of the
11 cases refer to in these instances, the Court allows some
12 latitude when you're talking about a state regulatory
13 standard coming in and the expert using that as a measure.
14 And that really is the measure here, not some evidence
15 based medicine or anything like that. That's more civil.

09:24:31

16 The measure here is did the doctor perform as a doctor, or
17 did he completely take off the coat and run around as a
18 drug dealer.

19 And so, to that extent, I do think that

09:24:46

20 that would be a relevant standard for some inquiry, and
21 it's more about, you know, you said there was no treatment
22 plan mentioning, you know, the number of dosage units of
23 medication. He says that in his opinion here, he said it's
24 a violation of the Texas Medical Board rule. And then our
25 position would be we would want to refute that and perhaps

09:25:01

1 call attention to something.

2 And that's really the way that I see the
3 cross-examination going. And then a little bit about his
4 own practice, I think, is relevant.

09:25:15

5 THE COURT: All right. Okay.

6 MR. JOUBERT: Your Honor, I'll do my best to
7 keep it down to an hour, hour and a half at most.

8 THE COURT: Mr. Davis, how much more time do
9 you need with this witness that's on the witness stand?

09:25:27

10 MR. DAVIDSON: Judge, assuming we don't need to
11 revisit any of the video, not the section that was played,
12 but other aspects of the visit, the office visit in
13 September 2012, I would say maybe an hour.

14 THE COURT: Why so much time?

09:25:45

15 MR. DAVIDSON: Because, Judge, I need to go
16 through with her some of the office visit charts that
17 discuss changes in --

18 THE COURT: Are you talking about her chart?

19 MR. DAVIDSON: Yes, sir.

09:25:57

20 THE COURT: Okay.

21 MR. DAVIDSON: That discussed changes in
22 medication and the reasons for those changes. Perhaps
23 less, Judge, I'm really frankly --

24 THE COURT: Well, I made some notes because

09:26:08

25 what I have experienced over the last 30-plus years, with

1 counsel, whether it's the government or the defense, is
2 that we start all over again the next Monday after we spent
3 two and a half, three, four hours with the witness on a
4 Friday. And I hate to have witness carry over. I hate
09:26:26 5 that because while there has to be some way to introduce
6 yourself back into the subject matter, it is unnecessary to
7 cover, and will not be permitted to recover -- to cover all
8 of the remember what we talked about on Friday kind of
9 questions. Let's go back there and restate those answers
09:26:48 10 all over again, that kind of thing.

11 MR. DAVIDSON: Judge, I'll let the Court know I
12 have no intention of doing that. I was going to pick up
13 where I was on my cross, had we continued to go on Friday.
14 The only two things I anticipate talking to her about that
09:27:01 15 we addressed at all on Friday is: One, criminal
16 convictions; and, secondly, I have a single question --

17 THE COURT: Criminal convictions on her part?

18 MR. DAVIDSON: Yes, sir.

19 THE COURT: You've already covered that,
09:27:13 20 haven't you?

21 MR. DAVIDSON: There have been some convictions
22 brought out, Judge. I think there may be some additional
23 ones.

24 THE COURT: I'm not going to let you go back
09:27:19 25 there. I mean, how many convictions do you need for a

1 person to be impeached?

2 MR. DAVIDSON: Well, I think, Judge, if a
3 witness is not truthful with the jury regarding their
4 criminal history --

09:27:28

5 THE COURT: I thought she said this is all I
6 remember. If you're refreshing her memory, why do you need
7 to refresh her memory about some things that --

09:27:39

8 MR. DAVIDSON: Because, Judge, just as with
9 Mr. Bourke, he didn't remember any additional convictions
10 until we asked him about certain additional ones, and then
11 he said: Oh, yes, I forgot about this.

12 So I think those are relevant to show her
13 credibility to the jury. I think they're going to be a
14 matter of two or three questions, total, in that regard.

09:27:51

15 THE COURT: So the credibility issue is no
16 longer a credibility issue in terms of impeachment, but a
17 credibility as impeachment as the conviction. Now you're
18 testing the credibility -- her credibility as to whether or
19 not she actually forgot?

09:28:03

20 MR. DAVIDSON: I think it relates to both
21 aspects, Judge.

22 THE COURT: Okay.

23 MR. DAVIDSON: And the only other issue, Judge,
24 is I have a single question regarding --

09:28:09

25 THE COURT: You don't have to tell me

1 everything.

2 MR. DAVIDSON: But it was addressed Friday.

3 THE COURT: I'm getting time sensitive because

4 we solved one of our juror's problems. But the other one

09:28:19

5 that had flight out -- that told us that she had plans to

6 be out of here next Tuesday, you know. That's something

7 that I don't have any control over and neither do you. And

8 I'm concerned about that, in terms of whether or not we are

9 maximizing and using our time as wisely as we should. And

09:28:33

10 I'm not accusing you of not doing that. I'm simply being

11 the administrator here. I'm the umpire. I'm going to call

12 the balls and strikes, and we don't have to like it, but

13 I'm going to do my best.

14 MR. DAVIDSON: Judge, the only other thing, we

09:28:47

15 would, since the Court discussed the length of the trial

16 and timing and things like that, we thought we should let

17 you know that we, the defense, believe that, collectively,

18 our case will probably take between two and three days. I

19 realize that's somewhat speculative because we don't know

09:29:03

20 how long cross-examination is or how long each witness is

21 going to take.

22 THE COURT: And you have control over some of

23 that, but I understand that.

24 MR. DAVIDSON: So we just wanted to put the

09:29:10

25 Court on notice of that.

1 THE COURT: How many witnesses are you going to
2 have?

3 MR. DAVIDSON: Judge, we will have -- I'm
4 thinking of eight offhand.

09:29:20 5 THE COURT: Let me ask you -- and we never
6 did -- probably need to go ahead and talk about it. We
7 never did talk about "two experts." One of them is
8 certainly a rebuttal person. What is the other person?

9 MS. BOLEN: The other one, Your Honor,
09:29:33 10 addresses a very specific component of the issues of
11 abandoning a role as a doctor. And it relates to
12 the risk --

13 THE COURT: I'm not going to permit two
14 witnesses to testify regarding the standard of care.

09:29:46 15 MS. BOLEN: Well, they're not going to be, in
16 my opinion, testifying about the standard of care. They're
17 going to be testifying about the indicia of a medical
18 practice and whether there was medical practice going on
19 here, whether it was good, bad or ugly doesn't matter.

09:29:59 20 THE COURT: So what are you going to get from
21 the witness that you're going to call to rebut Dr. Owen?

22 MS. BOLEN: They both have different roles and
23 some of it relates to the information that Dr. Evans
24 gathered.

09:30:09 25 THE COURT: That doesn't tell me anything to

1 say they got different roles. You can split up the -- what
2 you want into five different areas and say I want to call
3 five witnesses. I'm trying to find out whether or not this
4 is something that a person can testify to or not. And if
09:30:23 5 it is not, then the question is why shouldn't I limit very
6 narrowly you putting on two witnesses to say what one could
7 say?

8 MS. BOLEN: I understand where the Court is
9 coming from. The first witness, Dr. Bob Twillman is a
09:30:39 10 clinical psychologist. And his role in pain management
11 practice and his background and expertise relates to risk
12 litigation and the development of risk assessment tools
13 used.

14 THE COURT: But he is not able to tell us that
09:30:51 15 a doctor has or has not performed his duty appropriately,
16 if he's a psychologist, can he? Because he's not an MD.

17 MS. BOLEN: He's a clinical psychologist.

18 THE COURT: He's not an MD.

19 MS. BOLEN: No, he's not. You're right.

09:31:04 20 THE COURT: So there's not going to be a
21 head-on collision between a clinical psychologist and an
22 MD.

23 MS. BOLEN: He's a clinical psychologist who
24 runs the pain medicine program.

09:31:10 25 THE COURT: But he's running it from a clinical

1 psychologist perspective.

2 MS. BOLEN: Your Honor, in pain medicine,
3 clinical psychologists work side by side with physicians in
4 connection with --

09:31:21

5 THE COURT: I'm not disputing that. I'm trying
6 to find out why you're injecting that in the case when that
7 will be not be evidence for the jury. The clinical
8 psychologist cannot tell the jury, first of all, that a
9 doctor was practicing appropriately. He can just tell us

09:31:38

10 what he learned by standing next to them, or what he does.

11 MS. BOLEN: The clinical psychologist and pain
12 medicine is the one that does the risk evaluation of
13 patients. And in that connection, there is evidence in
14 before the Court, and ultimately before the jury, about

09:31:56

15 Dr. Evans' use of certain tools for that purpose and that's
16 what a clinical psychologist's role is.

17 THE COURT: Well, it doesn't matter what
18 Dr. Evans does. The question is whether or not I thought
19 he was going to be testifying in support of Dr. Evans, as
20 opposed to a second attempt at impeachment.

09:32:10

21 MS. BOLEN: No.

22 THE COURT: Are those two witnesses going to be
23 attempting to impeach Dr. Evans' testimony?

24 MS. BOLEN: No, sir. This particular witness

09:32:21

25 is going to support the indicia of a medical practice based

1 on the risk management component of it, versus the actual
2 picking up and prescribing --

09:32:34

3 THE COURT: Then I won't hear anything coming
4 from the psychologist about whether or not Dr. Evans has
5 chosen the appropriate standard in all of that.

6 MS. BOLEN: There will be on that issue.

7 MR. DAVIDSON: Judge, I believe -- I apologize.
8 You keep saying Dr. Evans, the client. I think you mean
9 Owens.

09:32:44

10 THE COURT: Owens. Dr. Owens. I apologize.

11 MS. BOLEN: I'm sorry. I guess --

12 THE COURT: So his testimony --

13 MS. BOLEN: Is very narrow and very limited to
14 risk litigation.

09:32:55

15 THE COURT: So how long do you think that will
16 take, because apparently this is your witness.

17 MS. BOLEN: Yes, sir.

18 THE COURT: Okay.

19 MS. BOLEN: Not even 30 witness, Your Honor.

09:33:00

20 THE COURT: This is your witness as well?

21 MS. BOLEN: Yes.

22 MR. JOUBERT: Your Honor, we would at this time
23 oppose the testimony of a Ph.D., doctor of philosophy and
24 psychologist for the basis the Court has stated. It
25 doesn't appear to be appropriate in this case.

09:33:13

1 THE COURT: Well, it may or may not be, but at
2 this point in time, having not had a chance to look at any
3 opinion that he has prepared and all of that, I'm concerned
4 about him crossing from Ph.D. and the MD area, and I will
09:33:27 5 sustain objections to that kind of crossover because that's
6 not his practice --

7 MS. BOLEN: I understand.

8 THE COURT: -- and that's not his profession.
9 But at this point in time, I'll have to reserve all my
09:33:43 10 rulings for the evidence when it's presented. I think you
11 had something else you wanted to present, and I cut you
12 off. I'm not sure if that was all or not.

13 MR. JOUBERT: I think that was on the first
14 issue, Your Honor.

09:33:53 15 THE COURT: On the first issue. All right.

16 MR. JOUBERT: I've forgotten it now.

17 THE COURT: Who's the next witness after this
18 witness? Is that going to be the doctor?

19 MR. JOUBERT: Your Honor, it depends on whether
09:34:02 20 we get any witnesses back from Louisiana. They had to go
21 home over the weekend.

22 THE COURT: They're stuck in Baton Rouge? I'm
23 just kidding.

24 MR. JOUBERT: You're exactly right, Your Honor.
09:34:10 25 You're exactly right. If we do not have them, then it will

1 be Dr. Owen.

2 THE COURT: Okay. How will you know it, and
3 when will you know?

4 MR. JOUBERT: I'll know by the break, I expect.

09:34:19

5 THE COURT: All right. So if we get started
6 now, it's about 9:30. If we get started, we should be
7 through with this witness?

8 MR. JOUBERT: May I have just a minute to go to
9 the men's room, Judge?

09:34:30

10 THE COURT: Yeah, we're going to do that. But
11 we will be through with this witness probably 10:30, 11:00,
12 even with your direct examination or redirect?

13 MR. JOUBERT: Yes, Your Honor.

09:34:37

14 THE COURT: So you should know by 11:00, is
15 that your best?

16 MR. JOUBERT: Yes, Your Honor.

17 THE COURT: All right. Let's take five minutes
18 and then we'll get started.

19 **(Recessed at 9:35 a.m.)**

09:42:30

20 **(The following was held before the jury)**

21 THE COURT: All right. Good morning, ladies
22 and gentlemen. How are you doing?

23 JURORS: Good morning.

24 THE COURT: Did you have a good weekend?

09:42:35

25 JURORS: Yes, sir.

Cross-Richardson/By Mr. Davidson

1 THE COURT: That's good news. All right. So
2 we're ready to pick up where we stopped on Friday
3 afternoon. And, Mr. Davidson, you may proceed.

4 MR. DAVIDSON: Thank you, Judge.

09:42:43

5 **KIMBERLY RICHARDSON**

6 **CONTINUED CROSS-EXAMINATION**

7 BY MR. DAVIDSON:

09:42:54

8 Q. Ms. Richardson, on Friday, you told the jury, in
9 response to Mr. Joubert's questions about your criminal
10 history, you told him about two felony convictions, that
11 you had a felony theft case, out of Chicago, in around
12 2000, and a drug case out of Louisiana more recently after
13 you had completed seeing Dr. Evans. Do you recall that?

09:43:14

14 A. The drug case that I had in Chicago was a while back.
15 And I served time for that in Chicago.

16 Q. Okay. I thought you testified that you had a
17 possession with intent?

18 A. That was here in Louisiana or there in Louisiana.

19 Q. That was in 2013 or 2014?

09:43:28

20 A. Yes.

21 Q. And then the drug case you're describing in Chicago
22 was what?

23 A. That was a long time ago.

24 Q. Right. That's a felony?

09:43:36

25 A. Yes.

Cross-Richardson/By Mr. Davidson

1 Q. Okay. Do you recall any other felony convictions
2 that you had in the Chicago area?

3 A. I was no angel. I had quite a few.

4 Q. Well, would you tell the jury about those?

09:43:49

5 A. Well, what would you like to know? I mean...

6 Q. Well, what were you convicted, when were you
7 convicted and what was the sentence imposed?

8 A. I'm not very good with dates, but --

9 Q. That's fine.

09:44:00

10 A. -- my convictions turned out to be shoplifting,
11 mostly. And there was one possession charge.

12 Q. Is that it, to the best of your recollection?

13 A. Yeah, yes, sir.

14 Q. Do you recall being convicted in Cause

09:44:20

15 Number 95-CF-2106, of the offense of forgery in DuPage, or
16 DuPage County, Illinois, and receiving a sentence of two
17 years in 2010 or 2000 -- I'm sorry. You were convicted at
18 the same time you were convicted of the felony theft case
19 that you described on Friday?

09:44:40

20 A. I believe -- I know the felony theft, but the forgery
21 I don't recollect.

22 Q. You don't have a recollection of that conviction?

23 A. No.

24 Q. Do you have a recollection of any other misdemeanors
25 involving moral turpitude that you were convicted of in

09:44:52

Cross-Richardson/By Mr. Davidson

1 the Chicago area?

2 **A.** No.

3 MR. JOUBERT: Your Honor, we object to that
4 language. It's legal language.

09:45:00

5 THE COURT: I'm going to sustain it. She's
6 already testified that she was convicted of some theft
7 charges, shoplifting. So that would be -- that question
8 would be too general.

9 MR. DAVIDSON: Okay.

09:45:11

10 BY MR. DAVIDSON:

11 **Q.** Do you have a recollection on May 22nd, 2001, being
12 convicted of a misdemeanor offense of prostitution in
13 Cause Number 2001-4002-84401, out of Cooke County?

09:45:34

14 MR. JOUBERT: Objection, Your Honor. That
15 appears to be remote in time. It's a misdemeanor offense.

16 MR. DAVIDSON: Judge, prostitution is a crime
17 of moral turpitude.

18 THE COURT: Overruled.

19 BY MR. DAVIDSON:

09:45:43

20 **Q.** Do you have a recollection of that conviction?

21 **A.** I was not convicted of prostitution, no.

22 **Q.** Did you -- were you living at that time at 2417 South
23 Third Street, Apartment 107, in Cicero, Illinois?

24 **A.** Yes, I was.

09:45:59

25 **Q.** But you were not the same Kimberly Richardson who was

Cross-Richardson/By Mr. Davidson

1 convicted of a misdemeanor offense of prostitution in May
2 of 2001, and received a six-month sentence?

3 **A.** Sir, I admit I am a convicted felon. I'm no angel,
4 but prostitution was not one thing that I ever did.

09:46:15 5 **Q.** So that is not you?

6 **A.** No.

7 **Q.** One -- just a single question because my notes are a
8 little bit conflicting regarding your testimony Friday
9 about cancer that you previously had?

09:46:30 10 **A.** Yes, sir.

11 **Q.** It was my understanding, or my recollection, that you
12 had cancer sometime in the early to mid 2000; is that
13 correct?

14 **A.** Yes, sir.

09:46:40 15 **Q.** But that you were in remission as of 2009?

16 **A.** Yes, sir.

17 **Q.** And I think you testified you've not had any further
18 issues since then; is that correct?

19 **A.** No, sir, no issues.

09:46:50 20 **Q.** Okay. I'd like to I think we stopped on Friday
21 discussing the first visit you had at Dr. Evans' office on
22 Augusta in December 2010. And I think we had gotten
23 through the various paperwork that you were involved with
24 Rhoda Mann, the nurse in providing that related to medical
09:47:14 25 background information?

Cross-Richardson/By Mr. Davidson

1 **A.** Yes, sir.

2 **Q.** Do you recall that?

3 **A.** Yes, sir.

4 **Q.** And do you recall that you -- after you finished with
09:47:20 5 Ms. Mann and had provided her all the relevant medical
6 background information, you went downstairs and you did --
7 you received massage therapy from Roland Rittmaster?

8 **A.** Yes.

9 **Q.** And you discussed with him what the areas of your
09:47:37 10 injury were and he provided therapy to those areas,
11 correct?

12 **A.** Yes, sir.

13 **Q.** And then you went back upstairs where you saw
14 Dr. Evans?

09:47:44 15 **A.** Yes, sir.

16 **Q.** And you have a recollection of Dr. Evans when you saw
17 him I think you testified that he did a hands-on
18 examination, that he checked your neck, your back, and he
19 discussed with you the location of pain and the level of
09:47:58 20 pain that you were feeling?

21 **A.** For the brief time that he was in the office, yes.

22 **Q.** Okay. And do you recall that when he was doing that
23 prior to that discussion, he had your chart, your file and
24 he was thumbing through it as he would routinely do during
09:48:13 25 visits?

Cross-Richardson/By Mr. Davidson

1 **A.** Yes, he did.

2 **Q.** So he would have -- you would have assumed that he
3 would have had the information provided by Ms. Mann, as
4 well as Mr. Rittmaster or anybody else that had seen you
5 that day in the office?

09:48:22

6 **A.** Yes.

7 **Q.** And as a result of your meeting with Dr. Evans, do
8 you recall that he prescribed you Roxicodone, 30
9 milligrams, 150 tablets, Lortab and Soma?

09:48:33

10 **A.** Yes, sir.

11 **Q.** And you had -- you testified that you had taken each
12 of these previously; correct?

13 **A.** Yes, sir.

14 **Q.** And that you therefore understood the risk and
15 benefits of each of those medications?

09:48:46

16 **A.** I was aware, yes.

17 **Q.** Okay. Did those medications -- you had those
18 medications filled?

19 **A.** Yes.

09:48:56

20 **Q.** And I think it was your testimony that you had them
21 filled and you took those medications?

22 **A.** Yes.

23 **Q.** Even though you said you had been clean for six years
24 and had had prescriptions filled during that six-year

09:49:13

25 period, but you had not taken those medications, did I

Cross-Richardson/By Mr. Davidson

1 understand that correctly?

2 **A.** Yes, it was a second opinion from -- Dr. Evans was my
3 second opinion.

4 **Q.** And the first opinion being Dr. Summers?

09:49:24

5 **A.** No, Dr. Spady.

6 **Q.** Okay. Malik Spady?

7 **A.** Malik Spady.

8 **Q.** And that was what caused you this time to agree to
9 feel it was okay to take those medications?

09:49:36

10 **A.** Yes, with being a recovering addict, I had my doubts,
11 but...

12 **Q.** Do you recall -- your next visit, I believe, was in
13 February of 2011. Do you have a recollection of that?

14 **A.** Vaguely.

09:49:55

15 MR. DAVIDSON: May I have just a second, Judge?

16 THE COURT: Certainly.

17 BY MR. DAVIDSON:

18 **Q.** This is going to be Chart 17. And do you have a
19 recollection when you visited Dr. Evans' office on

09:50:25

20 February 16th, 2011 -- this would be your second visit.

21 Do you remember one of the features that Dr. Evans' staff
22 would have you complete or provide information regarding
23 was what they called, rate your pain?

24 **A.** Uh-huh.

09:50:39

25 **Q.** And this is a tool that was used by various pain

Cross-Richardson/By Mr. Davidson

1 managed doctors that you had been to in the past; correct?

2 **A.** Yes.

3 **Q.** And it provided -- it provided your information to
4 the doctor about what your current level of pain was, the
5 first number, what the best it got was, and what the worst
6 it got was?

7 **A.** Yes, sir.

8 **Q.** And do you have a recollection that on that second
9 visit what you reported to Dr. Evans' staff was that you
10 were still -- you were still -- it was still hurting? You
11 were still having problems with your pain?

12 **A.** Yes, sir.

13 **Q.** And it was affecting your ability to function and
14 take care of your child?

15 **A.** To an extent.

16 **Q.** Okay. And would you agree that it was as a result of
17 that and this is information that was put in your chart,
18 as a result of that, Dr. Evans increased the prescription
19 of Roxicodone from 150 count to a 180?

20 **A.** Yes, I was.

21 **Q.** Okay. And would it be fair to say that that tweak of
22 the treatment plan that he had implemented back in
23 December of 2010, that seemed to work because the next
24 time you reported to Dr. Evans office, which would be that
25 next month, March 16th, 2011 -- this will be Number 19.

Cross-Richardson/By Mr. Davidson

1 You related to the staff that your rate
2 your pain level was down by not a lot, but it was down
3 some, and you also -- if you'll raise it up a little bit
4 higher -- you also related on your rate your activities
5 that you were able to function better in just about every
6 category from what you had been able to function
7 previously?

8 **A.** Yes, sir.

9 **Q.** Okay.

10 **A.** I didn't take the medications as prescribed. I took
11 them as needed.

12 **Q.** Okay. But regardless, the treatment plan that
13 Dr. Evans had put in place, based on the information you
14 provided him, based on your pain level, which is what he's
15 looking for, it was better, everything was going better
16 than it had previously been, according to what you related
17 to the staff and Dr. Evans?

18 **A.** Of course, yes.

19 **Q.** Okay. And do you recall, that as a result of that,
20 Dr. Evans reduced the amount of Roxicodone, 30 milligrams
21 from the 180, that he had moved you up to previously, in
22 February, back down to 150 milligrams?

23 **A.** I believe it wasn't because of that. I believe it
24 was because of my --

25 **Q.** I'm sorry.

Cross-Richardson/By Mr. Davidson

1 **A.** Weight.

2 **Q.** Okay. Do you remember that Dr. Evans as a result of
3 the information you provided in March of 2011, reduced the
4 dosage of your -- or the number of your Roxicodone, 30
5 milligrams, down from 180 to 150?

09:53:25

6 **A.** Yes.

7 **Q.** Do you recall that the next time you met with
8 Dr. Evans and just to back up a second -- so would it be
9 fair to say, that he felt it necessary, he would reduce
10 the amount of pain medication he was prescribing for you,
11 based on how you related your pain was as you reported it
12 to his staff?

09:53:45

13 **A.** Yes.

14 **Q.** Do you recall the next time you saw Dr. Evans was in
15 May, May 18th, 2011. This will be Number 21.

09:54:03

16 And do you remember at that visit you
17 indicated to him that you were intending to do some home
18 remodeling or you indicated to his staff?

19 **A.** I wasn't doing the remolding myself, but, yes.

20 **Q.** But that you were going to have home remodelling
21 done, and as a result of that, there would be more
22 activity, more physical activity that you might be
23 involved in?

09:54:24

24 **A.** No, sir, I did no more physical activity than before
25 the remodeling.

09:54:40

Cross-Richardson/By Mr. Davidson

09:54:59

1 Q. All right. So if the way it was understood by
2 Dr. Evans was that you were going to be involved in more
3 physical activity and, therefore, he increased the amount
4 of your Roxicodone, 30 milligram -- well, let's go to
5 Page 2.

09:55:27

6 Ms. Richardson, if you look at the notes
7 of Brenda Clayton in the middle of the page, it indicates
8 increase Roxicodone due to working on home remodeling.
9 So is it your testimony today that that was not correct,
10 that you were not working on home remodeling?

09:55:44

11 A. I was working on home remodelling, but I was -- I
12 wasn't the one actually doing the physical labor. Whether
13 they assumed that I was or not is something I can't say.

14 Q. Isn't it true that you asked for an increase in the
15 number of pills of Roxicodone, 30 milligrams at that
16 visit, based on that reason?

17 A. Was not based on that reason, but yes, I did ask for
18 the increase.

09:56:04

19 Q. Okay. And so, because isn't it true, that if a
20 person who is suffering from chronic pain, if they undergo
21 or if they are participating in a lot more physical
22 activity, whether it's home remodeling or whether it's
23 more hours at work, whether it's whatever that requires
24 more physical exertion, there is a potential there is
25 going -- they're going to suffer an increase in pain and

09:56:21

Cross-Richardson/By Mr. Davidson

1 so a doctor will frequently increase their dosage or their
2 number in order to compensate for that?

3 MR. JOUBERT: Objection. Speculative.

4 THE COURT: I'll sustain it.

09:56:34

5 BY MR. DAVIDSON:

6 Q. And would you agree that based upon this increase
7 from 150 milligrams to 170 milligrams -- I'm sorry -- from
8 150 number to 180 number, that, again, it appeared that
9 your treatment plan, the medications being prescribed by
10 Dr. Evans were working, you were reporting positive things
11 when you would go to the office?

09:56:53

12 A. As I said, I didn't take them as prescribed, but as
13 needed, yes.

14 Q. Okay. But that's what you were relating to his
15 staff?

09:57:05

16 A. Yes.

17 Q. If we'll go to the August 2011, it's going to be
18 Number 22.

19 And, again, you see the rate your pain that
20 you reported to his staff, those numbers were substantially
21 down from what they had previously been, as to not only
22 what your current level of pain was, but how much better it
23 had been based upon this additional prescription, this
24 additional tweak that Dr. Evans had prescribed; correct?

09:57:30

25 A. Yes.

09:57:48

Cross-Richardson/By Mr. Davidson

09:58:05

1 Q. Okay. And do you recall that, again, because of
2 that, because you are doing better, Dr. Evans based on the
3 number of Roxicodone, 30 milligram he had previously
4 prescribed, he backed off that number and, again, reduced
5 it from 180 count down to 150 count?

09:58:19

6 A. I don't believe that was because of the pain rate. I
7 believe it was because of my weight. He was more
8 interested in my weight than he was the rate pain.

9 MR. DAVIDSON: Judge, I object to speculation
10 and nonresponsiveness on the part of the witness.

11 THE COURT: Overruled.

12 BY MR. DAVIDSON:

09:58:31

13 Q. Do you recall, Ms. Richardson, that as a result, or
14 that after you related your rate of pain level to his
15 staff, on August 8th, 2011, at that visit, he reduced the
16 number of Roxicodone from 180 down to 150?

17 A. Yes.

09:58:50

18 Q. Do you recall that he also -- do you recall
19 discussing with him that you were feeling depressed or you
20 were suffering from some depression?

21 A. Yes.

22 Q. And as a result of that, he prescribed Celexa. Do
23 you remember that?

24 A. He actually prescribed Xanax.

09:59:01

25 Q. Okay. Do you recall that he prescribed Celexa?

Cross-Richardson/By Mr. Davidson

1 **A.** Yes.

2 **Q.** And Celexa is a non opioid that is antidepressant
3 that deals with people suffering from depression; correct?

4 **A.** Yes.

09:59:16

5 **Q.** Do you recall also, during the course of time that
6 you saw Dr. Evans, he was concerned about your blood
7 pressure and he talked with you about your blood pressure?

8 **A.** I have a history, of high blood pressure, yes.

09:59:26

9 **Q.** In fact, at that August visit it was 142 over 98. It
10 was high?

11 **A.** Yes, sir.

12 **Q.** That was an issue in his mind?

13 **A.** Yes, sir.

09:59:38

14 **Q.** And even though he wasn't your blood pressure doctor,
15 your general practitioner, he discussed that with you and
16 suggested that you talk to your general practitioner about
17 your blood pressure, don't you recall that happening on
18 several visits during the period of time that you saw
19 Dr. Evans?

09:59:47

20 **A.** No. I recall Osman or -- I can't pronounce his
21 name -- but I would call him, for me to discuss the matter
22 with him, but I don't remember speaking with Dr. Evans
23 about it, no.

10:00:00

24 **Q.** Do you recall the issue of your blood pressure and it
25 being too high and your needing to talk to your blood

Cross-Richardson/By Mr. Davidson

1 pressure doctor, do you recall that being discussed during
2 a number of your office visits during the time you saw
3 Dr. Evans?

4 **A.** Not with Dr. Evans, no.

10:00:12

5 **Q.** Do you recall that being discussed during a number of
6 the visits that you saw in August?

7 THE COURT: Asked and answered. Let's move on.

8 THE WITNESS: Yes.

9 BY MR. DAVIDSON:

10:00:23

10 **Q.** All right. I believe the next time that you saw --
11 this was August of 2011, I believe was the last visit we
12 just discussed.

13 **A.** Yes.

10:00:50

14 **Q.** And the next visit I think you had with Dr. Evans was
15 in October of 2011, October 4th. This will be Number 26.

16 THE COURT: Counsel, we've covered this last
17 week, and if you want to look at what I indicated I'll be
18 happy. Let's approach the bench, please.

19 **(The following was held at sidebar)**

10:01:22

20 THE COURT: You have not covered an area that
21 you did not cover last week. We started, she testified
22 about October, went through that with her, she said she
23 started selling dope at that time. She said she went to
24 prison, her son was given over, all of that I wrote down

10:01:39

25 because I was concerned, including about the false numbers

Cross-Richardson/By Mr. Davidson

1 with the stretching and all of that. All of that's been
2 covered. So we're not treading any new ground.

3 MS. BOLEN: 2010. I'm sorry, go ahead.

4 THE COURT: October of 2011, is when she
10:01:59 5 started selling, is that the visits that you're talking
6 about now?

7 MR. DAVIDSON: That is the visit, Judge, and if
8 you recall, Judge, what she testified on direct was that --

9 THE COURT: No. I'm not talking about direct,
10:02:12 10 I'm talking about cross-examination.

11 MR. DAVIDSON: Judge, this what I'm getting
12 into is the basis for the increase and the prescription
13 from 150 to 210.

14 THE COURT: She testified that the reason it
10:02:24 15 was increased because she and the doctor got into cuss
16 words and he gave her that without any explanation. What
17 I'm telling you is all that's been testified to.

18 MR. DAVIDSON: And, Judge, we have not
19 previously used the -- we have not previously used the
10:02:37 20 chart to show that the basis, the answer she gave is
21 contrary to what the chart shows as the basis for the
22 increase.

23 THE COURT: I don't know what she didn't do,
24 but I know what she did and you cross-examined her at
10:02:49 25 length about selling dope and about how it came about that

Cross-Richardson/By Mr. Davidson

1 she got into this -- got him to move it from 150 or 180 up
2 to 210 that's what I'm saying.

3 MR. DAVIDSON: Judge, I don't believe what I'm
4 going to be asking her it's not going to be a lot of
10:03:06 5 questions. I don't believe this is something that has
6 been --

7 THE COURT: A lot has nothing to do with it,
8 Counsel. It has to do with managing and that's my job and
9 I'm asking you to make sure that you're not really just
10:03:14 10 treading the same ground over and over --

11 MR. DAVIDSON: Yes, sir, Judge.

12 THE COURT: -- again.

13 MR. DAVIDSON: I will, certainly.

14 THE COURT: All right. Let's proceed.

10:03:34 15 **(The following was held in the presence of the jury)**

16 MR. DAVIDSON: May I proceed, Judge?

17 THE COURT: Proceed.

18 BY MR. DAVIDSON:

19 Q. If we can go to the October 4th, 2011, chart. And I
10:03:47 20 believe this is what the jury's been told that you got
21 into an argument with Dr. Evans at that visit regarding
22 you hadn't lost weight. You told him you wanted your
23 money back if he didn't increase the number of Roxicodone
24 tablets he gave you, and so, he on his own increased it
10:04:05 25 from 150 to 210 and there was no medical reason beyond the

Cross-Richardson/By Mr. Davidson

1 argument that you could provide this jury; is that
2 correct?

3 **A.** Correct.

4 **Q.** Okay. Do you recall -- well, first of all, in fact,
10:04:19 5 isn't it true that your weight, you had lost substantial
6 amount of weight from that prior visit? You had lost --
7 if you go to that second line, 226, down six, you had lost
8 six pounds?

9 **A.** Yes.

10:04:32 10 **Q.** Okay. So your testimony that Dr. Evans was mad at
11 you because you hadn't lost any weight you had in fact
12 lost six pounds?

13 **A.** Yes, but he was talking about overall weight, not
14 just that one.

10:04:44 15 **Q.** Do you recall discussing with Dr. Evans and his staff
16 medical issues you were having at that visit?

17 **A.** I had quite a few, yes.

18 **Q.** Do you recall discussing with them that you had an
19 outbreak of Lupus?

10:05:00 20 **A.** Yes.

21 **Q.** And Lupus, correct me, is a very painful, autoimmune
22 disease; is that correct?

23 **A.** Yes.

24 **Q.** And you actually had a doctor to treat your Lupus; is
10:05:08 25 that correct?

Cross-Richardson/By Mr. Davidson

1 **A.** Yes.

2 **Q.** But that doctor -- you were asking Dr. Evans' help in
3 treating the pain that relates to that Lupus; correct?

4 **A.** Because of the fact that I was seeing Dr. Evans for
5 pain medication.

10:05:25

6 **Q.** Exactly?

7 **A.** I made my other doctors aware of that fact.

8 **Q.** So you raised to Dr. Evans and his staff the issue of
9 Lupus, that the outbreak of Lupus that you had, and you

10:05:36

10 were requesting assistance with that pain?

11 **A.** I had requested it before, but, yes.

12 **Q.** Do you recall also telling Dr. Evans and his staff
13 that you were about to undergo chemotherapy, and as a
14 result of because of the pain associated with chemotherapy
15 treatments, you were requesting assistance in the amount
16 of pain medication for that purpose?

10:05:58

17 **A.** I believe so.

18 **Q.** Okay. All right. Even though you previously
19 testified that your cancer was in remission as of 2009,
20 and you had not had any further issues, in October of
21 2011, when you see Dr. Evans and his staff, you tell them
22 that you're about to undergo chemotherapy for an extended
23 period of time and so you're asking for assistance with
24 your pain medication to deal with that?

10:06:17

25 **A.** My oncologist Dr. Wheeler had --

10:06:33

Cross-Richardson/By Mr. Davidson

1 Q. I'm sorry.

2 MR. DAVIDSON: Judge, I object to the witness
3 not being responsive.

4 MR. JOUBERT: Your Honor, we object to him
5 cutting off the witness.

10:06:40

6 THE COURT: Overruled.

7 BY MR. DAVIDSON:

8 Q. Did you relate to Dr. Evans and his office on the
9 October 2011 visit, that you were about to undergo
10 chemotherapy and were requesting assistance with the pain
11 that was associated with that chemotherapy?

10:06:53

12 A. Yes, sir.

13 Q. Go to Page 2. And, in fact, if you will look in the
14 doctor's notes, MD notes, second line, changes in
15 medications, increase to 210 during chemotherapy. In
16 fact, isn't that exactly what took place in your
17 conversation with Dr. Evans at that October 2011 visit
18 where you raised the issue of Lupus with his staff, he was
19 aware as a result of that that you were having an outbreak
20 of Lupus, he was aware that you were claiming that you
21 were about to undergo chemotherapy and so, he was going to
22 provide you with pain assistance during that period of
23 time?

10:07:21

24 A. For the partial time that he was with me, yes.

10:07:43

25 Q. And, in fact, that's the reason that he increased

10:07:55

Cross-Richardson/By Mr. Davidson

1 your medication from 150 to 210, didn't he?

2 **A.** I don't believe that was the reason, sir, no.

3 **Q.** In fact, isn't that exactly what the records reflect?

4 **A.** That's what the record reflects, yes.

10:08:07

5 **Q.** Even though you testified this morning your cancer
6 was in remission?

7 **A.** Yes.

8 **Q.** So your cancer is in remission, but you're telling
9 the jury now that you were still undergoing chemotherapy

10:08:19

10 for cancer?

11 **A.** That's what I was trying to tell you before I was cut
12 off was that Dr. Wheeler my oncologist had suggested that
13 I take the chemotherapy as a preventative measure.

14 **Q.** For ten months?

10:08:34

15 **A.** Yes.

16 **Q.** Okay. Had you recently been diagnosed with cancer?

17 **A.** Not recently, no.

18 **Q.** Had you ever related to Dr. Evans' office that you
19 had recently been diagnosed with cancer?

10:08:48

20 **A.** I did not.

21 **Q.** Did not. Okay. Let's go -- go back to Exhibit 13.
22 Do you recall that at your first office visit in December
23 of 2010, one of the documents that you were asked to fill
24 out by Ms. Mann is what's called a history of injury?

10:09:19

25 **A.** Yes, sir.

Cross-Richardson/By Mr. Davidson

1 Q. And that's your handwriting?

2 A. Yes, sir.

3 Q. Okay. And this was for you to relate to the office
4 medical issues that you were having; correct?

10:09:29

5 A. Yes, sir.

6 Q. Okay. If you'll look at the bottom, the third line
7 of current complaints, would you read for the jury what
8 the third line says?

9 A. Recently diagnosed with cancer, Lupus.

10:09:46

10 Q. And isn't it fair to say, Ms. Richardson, that during
11 the succeeding visit that you had with Dr. Evans in --
12 beyond the November -- or beyond the October 2011 visit,
13 you continued to complain and relate to them about the
14 issues you were having from Lupus, the pain issues?

10:10:02

15 A. Yes. And I still have it today.

16 Q. Okay. And the medication that was prescribed was
17 because of that increase in pain that you were having as a
18 result of the outbreak of Lupus?

19 A. Not just that, not because of the Lupus only.

10:10:20

20 Q. Right. You're right. You're also undergoing
21 chemotherapy and you're also under regular pain as a
22 result of the injuries you had sustained. All of those
23 were the basis for the treatment plan that was in place
24 into 2012; correct?

10:10:33

25 A. For the treatment plan, but I don't believe it was

Cross-Richardson/By Mr. Davidson

1 the fact for the increase.

2 **Q.** Okay. Contrary to what the records show?

3 **A.** Yes.

4 **Q.** Okay. During the period of time -- during the period
10:10:51 5 of time that you saw Dr. Evans, do you recall that you
6 also, you periodically were asked to take a test called
7 the COMM test, C-O-M-M, which is a test designed to see
8 whether a person who is under opoid treatment plan might
9 be misusing their medication?

10:11:17 10 **A.** I don't recall that, no.

11 **Q.** You don't have a recollection that you --

12 **A.** No.

13 **Q.** Okay. Will you go to Number 29. And you -- you've
14 taken these tests in the past with other pain management
10:11:29 15 doctors, haven't you? It's a little bubble, you self
16 answer questions and you fill in whether it's never
17 happened, it frequently happens. You know what I'm
18 talking about?

19 **A.** Yes.

10:11:38 20 **Q.** You've taken that before, but it's not your
21 recollection that you've taken those with Dr. Evans?

22 **A.** No.

23 **Q.** Okay. January 17th, 2011, is that your signature?

24 **A.** Yes.

10:11:50 25 **Q.** Do you have a recollection of completing that COMM

Cross-Richardson/By Mr. Davidson

1 test?

2 **A.** Yes.

3 **Q.** If we'll go to Number 30. Again, that's your
4 writing?

10:12:06

5 **A.** Yes.

6 **Q.** Do you have a recollection in August of 2011, taking
7 that COMM test for Dr. Evans' office?

8 **A.** Yes.

10:12:20

9 **Q.** And that's a self reporting test so the person who
10 grades that test has to rely on the integrity and honesty
11 of the individual who is completing that test as to what
12 their situation is?

13 **A.** Yes.

14 **Q.** If you'll go to March 2012.

10:12:34

15 Again, that was your signature at the top of
16 that page?

17 **A.** Yes.

18 **Q.** And you completed that test in March of 2012?

19 **A.** Yes.

10:12:49

20 **Q.** And do you see that all of those questions are
21 answered and it's hard to read, but in the never category,
22 the first category all the way to the left?

23 **A.** Yes.

10:13:04

24 **Q.** Indicating that you have not been taking medications
25 or handling medications differently than what you

Cross-Richardson/By Mr. Davidson

1 prescribed -- what were prescribed or taking more
2 medicine -- medications than were prescribed for you, in
3 other words, were you honest in your answers to those
4 tests when you provided that information to Dr. Evans and
5 his staff?

10:13:18

6 **A.** As I said, I took the medication, but it was not as
7 prescribed, no.

8 **Q.** So you were not honest in your answers to the test?

9 **A.** You could say that, yes.

10:13:34

10 **Q.** And you understood that Dr. Evans and his staff, when
11 he is preparing a treatment plan for you in trying to see
12 whether you might be misusing or diverting prescription
13 medication that he's given you, part of what he has to do
14 is rely on information that you're providing?

10:13:49

15 **A.** Well, yes, sir, if he wanted more information he
16 could have gotten a blood test or urine, and he didn't.

17 **Q.** Do you recall in testifying that in August of 2012,
18 you were approached by postal inspector agents?

19 **A.** Yes, I was.

10:14:09

20 **Q.** Okay. And they interviewed you at sometime, I don't
21 know if it was before or after you made the undercover
22 video for them in September of 2012, they have -- they
23 have interviewed you previously; correct?

24 **A.** Yes.

10:14:26

25 **Q.** And do you recall -- and were you truthful with the

Cross-Richardson/By Mr. Davidson

1 agents in what you told them?

2 **A.** I believe so.

3 **Q.** Okay. Just like you've continued to be truthful with
4 the agents ever since you first met them?

10:14:36 5 **A.** Yes.

6 **Q.** So you have not withheld, you've been honest, you've
7 been forthcoming about all your issues just as you have
8 with this jury?

9 **A.** Yes.

10:14:45 10 **Q.** Do you recall being asked by those agents when you
11 were interviewed and was the agent who interviewed you was
12 it a postal inspector, inspector Marian Williams was that
13 the individual?

14 **A.** I believe so.

10:14:55 15 **Q.** And do you recall the nature of that interview when
16 she gave you a bunch of written questions and she had you
17 handwrite out your answers. Do you recall that?

18 **A.** I'm sorry. I don't.

19 MR. DAVIDSON: May I approach the witness,
10:15:54 20 Judge?

21 THE COURT: Yes, sir.

22 MR. DAVIDSON: Judge, I just marked as Defense
23 Exhibit 1000, just for identification purposes an interview
24 that Ms. Richardson gave to inspector -- postal inspector
10:16:18 25 Marian Williams.

Cross-Richardson/By Mr. Davidson

1 BY MR. DAVIDSON:

2 Q. Would you look at this, Ms. Richardson, and see if
3 recognize it. It's got some highlighting on it. It's
4 mine. It's not yours. Look at that and see if it's your
5 handwriting.

10:16:32

6 A. Yes.

7 Q. Do you recall that being the interview that you gave
8 Inspector Williams? It's undated, but at some point
9 around the time of the fall of 2012?

10:16:42

10 A. Yes.

11 Q. And do you recall being asked whether you had ever --
12 being asked whether you sold pills to others?

13 A. Yes.

14 Q. And what answer did you give Inspector Williams?

10:17:04

15 A. I put --

16 Q. I'm sorry?

17 A. I don't know what I put. I can't see.

18 Q. Does that look like a zero?

19 A. Oh, yes.

10:17:10

20 Q. Okay. So you told Inspector Williams that you did
21 not sell the pills that you had been prescribed; is that
22 correct?

23 A. Well, yes, I did. I had fear of being prosecuted for
24 distribution.

10:17:21

25 Q. So the reality is, you were not truthful with

Cross-Richardson/By Mr. Davidson

1 Inspector Williams, notwithstanding your testimony about
2 two minutes ago?

3 **A.** Not too many people would be, no.

4 **Q.** So the answer was no, is that correct, you were not
5 truthful?

6 **A.** Yes.

7 **Q.** Okay. And did you -- did she ask you how much you
8 sold the pills for?

9 **A.** Yes, she did.

10 **Q.** And what did you tell her?

11 **A.** Told her I didn't sell them.

12 **Q.** Okay. And did she ask you who you sold them to?

13 **A.** Yes.

14 **Q.** And who did you tell her?

15 **A.** Obviously, I would tell her nobody.

16 **Q.** All right. So is it fair to say that you lied to
17 Inspector Williams when she interviewed you?

18 THE COURT: Asked and answered, counsel. Let's
19 proceed.

20 BY MR. DAVIDSON:

21 **Q.** On Friday, we saw a small portion of the office visit
22 that you made to Dr. Evans' office in September of 2012,
23 do you recall that?

24 **A.** Yes.

25 **Q.** You've seen that entire video; correct?

Cross-Richardson/By Mr. Davidson

1 **A.** Yes, I have.

2 **Q.** And you've seen that recently?

3 **A.** Yes, I have.

4 **Q.** In preparation for your testimony?

10:18:38

5 **A.** Yes, sir.

6 **Q.** And is it fair to say, without going through and
7 having the judge want to kill me, by playing that entire
8 video, it's a several hour video; correct?

9 **A.** Yes, it is.

10:18:52

10 **Q.** That's how long you were at Dr. Evans' office that
11 day?

12 **A.** Unfortunately, yes.

13 **Q.** And that is exactly how most of us feel when we go to
14 the doctor's office.

10:19:04

15 **A.** Yes.

16 **Q.** Do you recall when you first got there you checked in
17 with Jason, Jason Campbell and then you sat in the waiting
18 room?

19 **A.** Yes, I did.

10:19:10

20 **Q.** There were other patients in the waiting room?

21 **A.** Yes, there were.

22 **Q.** Do you recall as the video reflects, that you engaged
23 in conversations about topics of the day?

24 **A.** Yes.

10:19:19

25 **Q.** There had been a recent hurricane, a big topic of

Cross-Richardson/By Mr. Davidson

1 conversation was the fact that Fed Ex had seized a package
2 or had not delivered a package in Louisiana that had been
3 sent by Briar Grove Pharmacy; correct?

4 **A.** Correct.

10:19:36

5 **Q.** And there were several other topics that were
6 discussed with you by other patients that were in the
7 waiting room that morning?

8 **A.** Yes, sir.

9 **Q.** Normal conversations?

10:19:43

10 **A.** Yes.

11 **Q.** Okay. Then do you recall being called in and meeting
12 with Osman?

13 **A.** Yes.

10:19:55

14 **Q.** And that was routine for the office visits that you
15 had with Dr. Evans?

16 **A.** Yes.

17 **Q.** And do you recall that when you met with Osman, y'all
18 discussed what your pain level was?

19 **A.** Yes.

10:20:04

20 **Q.** And the rate your pain information, you would provide
21 that information and he would put it in the chart, and
22 that would be the chart that Dr. Evans would review;
23 correct?

24 **A.** Yes.

10:20:14

25 **Q.** And there was a discussion about what your pain level

Cross-Richardson/By Mr. Davidson

1 was?

2 **A.** Yes.

3 **Q.** Do you recall telling Osman that your pain level was
4 about six, that you were getting better? Would you
5 like --

10:20:22

6 **A.** I can't recall the particular conversation, but it
7 may have been.

8 **Q.** Okay. And do you recall him asking you, is that with
9 medication, and then how about without medication, and do
10 you recall saying, without medication a ten I'm going to
11 the hospital?

10:20:31

12 **A.** That was a typical visit and that was the
13 conversation.

14 **Q.** So what you were indicating in your conversation with
15 Osman that's going to get reflected in the file is that
16 without the medication that's being prescribed, you're in
17 excruciating pain; correct?

10:20:40

18 **A.** Yes.

19 **Q.** Do you recall him asking you about your daily
20 activities and how you are able to function on a daily
21 basis?

10:20:54

22 **A.** Yes.

23 **Q.** And, again, that was routine for the visits?

24 **A.** Yes, it was.

10:21:01

25 **Q.** And do you recall telling him that you still are

Cross-Richardson/By Mr. Davidson

1 doing okay in your functioning with the medication that's
2 being prescribed?

3 **A.** Yes, I did.

4 **Q.** Okay. And do you recall there being some other
5 discussion with him, I think y'all talked about whether --
6 you mentioned that you had polyps? Do you recall
7 discussing polyps with him?

8 **A.** No, I don't I don't recall that.

9 **Q.** And the conclusion of him taking your blood pressure
10 and Osman was the one who took your blood pressure,
11 checked your weight and would ask you a preliminary set of
12 medical questions and return to the waiting room?

13 **A.** Yes.

14 **Q.** And again, you were in the waiting room for a few
15 more minutes, more conversations with other patients. And
16 then you were called back into the office to meet with
17 Roland Rittmaster?

18 **A.** Yes.

19 **Q.** And do you recall that morning when you met with
20 Roland Rittmaster him also asking you about your pain
21 level?

22 **A.** Yes.

23 **Q.** Asking whether it was better, whether it was worse,
24 about the same, and you provided that information and,
25 again, you gave him from your perspective, from a 0 to 10

Cross-Richardson/By Mr. Davidson

1 scale, you told him that your pain level was about a six,
2 do you recall that?

3 **A.** Yes.

10:22:11

4 **Q.** Do you recall him asking you how your medicines were
5 doing, were they working, did you need more, did you need
6 less, and you responded that they were okay?

7 **A.** Yes.

10:22:29

8 **Q.** Do you recall him from the chart, it reflecting
9 information that you had a child you had to take care of,
10 that you were not working outside the home, but you were
11 taking care of your son? Do you recall there being a
12 discussion about that, whether you could function and do
13 that?

14 **A.** Yes.

10:22:39

15 **Q.** And then do you recall him asking you about your pain
16 and where your pain, where you were suffering the most
17 pain. Do you have a recollection of that conversation?

18 **A.** Yes, I do. It was a typical conversation you have.

10:22:54

19 **Q.** Okay. And it's the kind of information they would
20 get from a patient at every visit, that they had done with
21 you; correct?

22 **A.** Not only myself but other patients, yes.

10:23:07

23 **Q.** Okay. And do you recall saying my cervical and my
24 lumbar and those are two areas of your spine, cervical is
25 near your neck, lumbar is down lower back?

Cross-Richardson/By Mr. Davidson

1 **A.** Yes.

2 **Q.** Do you recall telling him that they both hurt. And
3 he said he pressed you on it, which hurts the most. And
4 you told him the cervical, your neck hurts the most?

10:23:20

5 **A.** Yes.

6 **Q.** And do you recall that when he asked you this he's
7 writing in the chart? He's writing information down?

8 **A.** Oh, yes.

10:23:29

9 **Q.** Okay. Do you recall talking to him about the
10 cervical pain and saying it's pushing, there's something
11 pushing against the nerve, it's causing my left side to be
12 paralyzed, but I'm not opting for surgery. Do you
13 remember telling him you're not opting for surgery?

14 **A.** Yes, until I find out there was -- releasing fluid.

10:23:44

15 **Q.** Okay. And you're not opting for surgery, that was
16 something you were very consistent on from the first time
17 you saw Dr. Evans; correct? You weren't doing surgery
18 again?

19 **A.** Right, I did not want surgery no.

10:23:57

20 **Q.** And do you recall discussing with him the tingling
21 that this pain was causing in your hands and feet?

22 **A.** As it still does, yes.

23 **Q.** Okay. And y'all discussed your weight and the fact
24 that you had lost weight?

10:24:09

25 **A.** Yes.

Cross-Richardson/By Mr. Davidson

1 Q. Do you remember saying I love those scales, they're
2 good scales, keeping using those scales?

3 A. I wish I was thin today, yes, or smaller.

10:24:20

4 Q. And then do you recall him doing physical therapy on
5 you, putting you on the table and actually doing massage
6 therapy, hands on, feeling your muscles to see how tight
7 they were?

8 A. Yes, and it did help.

10:24:30

9 Q. And that was something he would do routinely if you
10 would allow physical therapy?

11 A. That was myself or with other patients, yes.

12 Q. Okay. And then do you have a recollection of going
13 upstairs and meeting with Ms. Mann, Rhoda Mann -- after
14 you finished with Roland Rittmaster?

10:24:49

15 A. I mostly seen Brenda.

16 Q. All right. Do you recall in terms of the period of
17 time -- again, you've just seen the videos recently, would
18 it surprise you that you spent approximately 18 minutes or
19 so with Roland Rittmaster, that length of time?

10:25:06

20 A. Approximately.

21 Q. Okay. And getting back with Osman, would it surprise
22 you that the amount of time, according to the clock, would
23 be around the 8 to 10 minutes of time that you spent with
24 involved in his questioning and checking your vitals and
10:25:19 25 all that?

Cross-Richardson/By Mr. Davidson

1 **A.** About that long, yes.

2 **Q.** Do you recall -- I know you said you normally met
3 with Brenda, did you walk with Rhoda Mann when you went
4 upstairs to see the doctor?

10:25:31 5 **A.** Yes, I did.

6 **Q.** And do you have a recollection of telling Ms. Mann
7 that your Lupus was worse?

8 **A.** Yes, it is.

9 **Q.** And do you have a recollection, and I'm asking you
10:25:40 10 now to think back to the video that we saw on Friday, do
11 you have a recollection that when Dr. Evans came in, he
12 sat down at the table; right?

13 **A.** Yes.

14 **Q.** And he had there available for him, he had this
10:25:53 15 chart, your chart?

16 **A.** Yes.

17 **Q.** And he's going through the chart, and one of the
18 things Rhoda tells him on the video is that your Lupus is
19 worse; correct?

10:26:00 20 **A.** She mentioned it, yes.

21 **Q.** Okay. And he's thumbing through the chart, he's got
22 everything that's in there, in the chart, which is going
23 to be from Osman, Roland Rittmaster, a brief from the
24 nurse, and then based upon that, he does not make any

10:26:15 25 change to your prescription to the medication that you are

Cross-Richardson/By Mr. Davidson

1 receiving, is that correct?

2 **A.** No, he didn't make any change.

3 **Q.** I'm sorry?

4 **A.** No, he did not make any change.

10:26:23

5 **Q.** Okay. And that is after he has had the opportunity
6 to review the chart, which has what the other staff
7 members have already -- the information that's provided in
8 there from the other staff members?

9 **A.** Yes.

10:26:45

10 **Q.** Is it fair to say, that every time you went to
11 Dr. Evans' office, you would see multiple members of
12 Dr. Evans' staff, as well as Dr. Evans for some period of
13 time, at each of those visits?

14 **A.** Yes.

10:27:08

15 **Q.** Okay. That at each of those visits, as you've just
16 testified, they would, in addition to checking your
17 vitals, they would ask you about your pain level, where it
18 hurts, how you were functioning, all the sort of things
19 you just testified to, that was a routine visit?

10:27:22

20 **A.** Of course, yes.

21 **Q.** Is it fair to also say, that Dr. Evans routinely
22 would tweak or adjust your medication as issues arose? He
23 would either increase it, he would decrease it, he would
24 add perhaps Celexa or some other type of prescription on
10:27:43 25 an as-needed-basis based upon your complaints?

Cross-Richardson/By Mr. Davidson

1 **A.** Well, I was told that Celexa along with the Motrin
2 that was prescribed for me, was only because they had to
3 have a nonnarcotic with the ones that I was prescribed.

10:28:03

4 **Q.** So is it fair to say -- so it's your testimony that
5 Dr. Evans had to prescribe a nonopioid?

6 **A.** That's what I was told, yes.

10:28:21

7 **Q.** All right. And that the medications that they
8 prescribed, the Mobic, the Celexa, those are medications
9 designed to deal with anxiety, depression, different
10 aspects and those are nonopioids; correct?

11 **A.** Yes.

10:28:41

12 **Q.** Okay. Is it fair to say that at times during your
13 visit at Dr. Evans' office, based on the information
14 obtained from you during those visits, he reduced your
15 Roxicodone 30 milligram prescriptions from some number to
16 a lower number?

17 THE COURT: Counsel, that's been asked and
18 answered. You've gone through the charts.

19 BY MR. DAVIDSON:

10:28:50

20 **Q.** Is it also -- now did you also in the summer of 2012,
21 because of the pain levels you were reporting, did he
22 also, Dr. Evans also ask you to start doing peg board
23 treatments? Do you have a recollection of that?

24 **A.** Do what?

10:29:11

25 **Q.** Peg board treatments? Do you remember those?

Cross-Richardson/By Mr. Davidson

1 **A.** Peg boards?

2 **Q.** Yes.

3 **A.** Yes, I was given one.

4 **Q.** And you understood that the reason for the peg board
5 similar to massage therapy only different, it's an
6 alternate treatment designed to help reduce pain in a
7 patient; correct?

8 **A.** It may be for other patients. It didn't work on me.

9 **Q.** Okay. And you understand that what it does, is it is
10 literally a peg on a board and you push it against the
11 muscle that is very tight?

12 **A.** Pressure points.

13 **Q.** Right. And the object is to try to loosen that
14 muscle which will cause a reduction of pain which will
15 allow the person to function better?

16 **A.** Correct, yes.

17 **Q.** And you did that, you were given the peg board and
18 you were asked to do that regularly outside of the office;
19 correct?

20 **A.** Yes.

21 **Q.** And did you do it on a daily basis outside the
22 office?

23 **A.** For a brief period, yes.

24 **Q.** How brief?

25 **A.** Maybe two weeks.

Direct-Richardson/By Mr. Joubert

1 Q. And in two weeks, it wasn't fixed so you quit doing
2 it?

3 A. It did not work on me.

4 Q. So in two weeks you had not felt release so you
5 stopped?

6 A. Yes, my son uses the board now as a chair.

7 Q. Did you continue to when Osman and Roland Rittmaster
8 would see you at succeeding office visits, did you
9 continue to tell them that you were doing the therapy
10 outside the office?

11 A. Yes, I told them.

12 Q. Which was not true?

13 A. No.

14 Q. And it's fair to say, that you went to Dr. Evans
15 because you were seeking pain management without surgery;
16 correct?

17 A. Yes.

18 MR. DAVIDSON: I'll pass the witness, Judge.

19 THE COURT: Any redirect?

20 MR. JOUBERT: Yes, Your Honor.

21 THE COURT: All right.

22 **REDIRECT EXAMINATION**

23 BY MR. JOUBERT:

24 Q. Good morning, Ms. Richardson.

25 A. Good morning.

Redirect-Richardson/By Mr. Joubert

1 Q. I want to go over just a few areas with you about
2 questions about Dr. -- I'm sorry -- Mr. Davidson asked you
3 about?

4 A. Yes.

10:31:26 5 Q. His last question was whether you went to see
6 Dr. Evans because you were suffering and you wanted the
7 pain management outside of surgery. Is that the only
8 reason you saw the doctor?

9 A. No, it wasn't.

10:31:38 10 Q. What other reasons did you see Dr. Evans?

11 A. To obtain medications that I could sell.

12 Q. And why was that?

13 A. Basically the fact that I was paying quite a bit of
14 bills and was broke and needed something other than --

10:31:54 15 Q. Well, that's why you were selling your medication,
16 but I'm asking, why did you go to Dr. Evans to get
17 medication, as opposed to going to some other doctor?

18 A. Oh, I couldn't get the amount that -- any other
19 doctor would not prescribe that amount that Dr. Evans did.

10:32:11 20 Q. Is it your testimony that other doctors in the
21 Louisiana area you were seeing, they would not write the
22 prescription for Roxicodone at the level that Dr. Evans
23 was writing?

24 A. Yes.

10:32:20 25 Q. Let's talk a minute about now the reasons for the

Redirect-Richardson/By Mr. Joubert

1 increase in the Roxicodone and the decrease and then the
2 increase again. You told us I think on Friday, you
3 started seeing Dr. Evans he was prescribing what dosage
4 units of Roxicodone? About how many?

10:32:38 5 **A.** When I started it was 150, then it went to 180.

6 **Q.** Correct.

7 **A.** And then back down to 150 up to 210.

8 **Q.** Now, you told the jury in your mind why the number
9 was reduced from 180 to 150. I think it was the spring of
10 2011?

10:32:56 11 **A.** Yes.

12 **Q.** Can you tell the jury again exactly in your mind why
13 the reduction -- why Dr. Evans reduced the number of
14 Roxicodone pills?

10:33:06 15 **MR. DAVIDSON:** Objection, Judge. Asked and
16 answered.

17 **THE COURT:** I'm going to sustain it.

18 **BY MR. JOUBERT:**

19 **Q.** Did you discuss -- did you tell us on Friday about an
10:33:17 20 argument or two arguments that you had with the doctor?

21 **A.** Yes, I did.

22 **Q.** In your mind, is it because of the arguments that he
23 reduced the medication of roxi?

24 **A.** Yes.

10:33:25 25 **MR. DAVIDSON:** Same objection, Judge. Asked

Redirect-Richardson/By Mr. Joubert

1 and answered.

2 THE COURT: Overruled.

3 BY MR. JOUBERT:

10:33:31

4 Q. I'm responding now to questions that Mr. Davidson
5 asked you repeatedly concerning your understanding for why
6 you had a decrease in your medication and then and
7 increase again. Now, you told the jury about two
8 different arguments you had with the doctor at least one
9 was very --

10:33:45

10 A. The second one was very heated, yes.

11 Q. Very heated, and words were exchanged, profanity?

12 A. Yes, it was.

10:33:59

13 Q. And at that time, you told the doctor if you didn't
14 give you an increase, you were going to take your business
15 elsewhere, wasn't that your testimony?

16 A. Under no certain terms I told him if I couldn't get
17 my increase I wanted my money back.

18 Q. The money meaning what money?

19 A. The money for the visit.

10:34:09

20 Q. Which was how much?

21 A. \$240.

22 Q. In fact, you had already paid the \$240 when you told
23 the doctor this?

24 A. Yes.

10:34:16

25 Q. So as a result of that, what happened? Did the

Redirect-Richardson/By Mr. Joubert

1 doctor increase your medication?

2 **A.** Yes, he did.

3 **Q.** In your understanding of the medical charts that Mr.
4 Davidson showed you, did you ever see what the doctor was
10:34:26 5 writing on the charts?

6 **A.** No, I did not.

7 **Q.** So you don't know what he wrote as opposed to what
8 your conversation with him was, do you?

9 **A.** No, I had no idea what he wrote.

10:34:35 10 **Q.** Have you ever worked in the medical field?

11 **A.** No, I haven't.

12 **Q.** Are you -- have any experience on assessing pain or
13 describing on a chart what pain is like, I mean, other
14 than what you did with Dr. Evans?

10:34:53 15 **A.** No.

16 **Q.** You may have filled out charts for other doctors;
17 correct?

18 **A.** I have.

19 **Q.** What about this peg board Mr. Davidson just asked you
10:35:03 20 about, what was that for?

21 **A.** I'm sorry?

22 **Q.** The peg board?

23 **A.** Paperwork work?

24 **Q.** Peg board?

10:35:09 25 **A.** Oh, the peg word it was to basically -- they were

Redirect-Richardson/By Mr. Joubert

1 little begs on a big board to -- it acted like
2 acupuncture. It worked on tight spots in the muscles and
3 helped release some of it -- reduce the pain.

4 Q. Did it work for you?

10:35:27

5 A. No, it did not.

6 Q. And, in fact, did you say your son now uses it for a
7 chair?

8 A. He made a chair out of the bottom board.

10:35:40

9 Q. Any other doctors ever give you a peg board as a way
10 of treatment for your pain?

11 A. No.

12 Q. Did Dr. Evans give you a urine test?

13 A. No, never.

14 Q. Never. In how many years did you see him?

10:35:51

15 A. I believe it was two, close to two and a half years,
16 a urine examination.

17 Q. Did Dr. Evans ever refer you for a current MRI?

18 A. He never suggested that I have one because I always
19 made sure every six months I got one.

10:36:05

20 Q. Oh, you got one from your other doctors?

21 A. Yes, I did.

22 Q. The doctors in Louisiana?

23 A. Yeah, Dr. Spady in particular, she would write every
24 six months for MRI.

10:36:15

25 Q. Did Dr. Evans ever refer you for an X-ray?

Redirect-Richardson/By Mr. Joubert

1 **A.** No.

2 **Q.** Did Dr. Evans refer you for therapy, other than what
3 Osman or Roland was giving you?

4 **A.** No, sir.

10:36:23 5 **Q.** Do you know anything about Osmon's background?

6 **A.** Not too much, no.

7 **Q.** To your knowledge, is he a trained therapist -- a
8 massage therapist?

10:36:35 9 **A.** I assumed that's what he was. He worked in the
10 office.

11 **Q.** You assumed it, but you don't know that, do you?

12 **A.** No, I don't.

13 **Q.** To your knowledge, was Osman a trained physical
14 therapist?

10:36:42 15 **A.** I don't know.

16 **Q.** What about Roland Rittmaster same questions, do you
17 know whether for a fact, whether Mr. Rittmaster was either
18 a trained therapist, massage therapist or a physical
19 therapist?

10:36:53 20 **A.** No, I don't.

21 **Q.** What is your understanding about the training of
22 Rhoda Mann. What is her background?

23 **A.** I thought she was -- had been with Dr. Evans for
24 quite awhile and she was a registered RN, worked in the
10:37:06 25 office with Dr. Evans.

Redirect-Richardson/By Mr. Joubert

1 Q. Who told you that?

2 A. Well, she did.

3 Q. Now, I want you to think about it for a minute. Do
4 you recall that Ms. Mann told you she was a registered
5 nurse?

10:37:15

6 A. Yes, I believe it was early on visits.

7 Q. Well, could it have been she told you she was an LVN?

8 A. Yes.

9 Q. Licensed vocational nurse?

10:37:28

10 A. Yes.

11 Q. What about Brenda Clayton, did Brenda Clayton or
12 anyone ever tell you about whether Brenda Clayton had any
13 medical certification training?

14 A. I don't recall, no.

10:37:57

15 Q. Mr. Davidson showed you a number of the so charts or
16 do you recall those charts that you indicated what mood
17 swings you were in or whether you were having any?

18 A. Yes.

19 Q. I'd like to show you one now from Exhibit 50 I think
20 it is.

10:38:11

21 THE COURT: Is this government's 30?

22 MR. JOUBERT: Yes, Your Honor.

23 BY MR. JOUBERT:

24 Q. Can we have --

10:38:58

25 THE COURT: You want it on a different screen?

Redirect-Richardson/By Mr. Joubert

1 Are you going to show it on the ELMO or on a different
2 screen?

3 MR. JOUBERT: Just one second, Your Honor.

4 Use the ELMO. Thank you.

10:39:15 5 BY MR. JOUBERT:

6 Q. All right. This was your one sheet from your chart,
7 Government's Exhibit 60, our Bates Number 62. And on this
8 occasion and the date appearance at the bottom it says
9 12-15-10, that would be December 15th, 2010. A few months
10:39:34 10 after you first started seeing Dr. Evans. Do you recall
11 this?

12 A. Yes.

13 Q. Now, who would you fill this out with?

14 MR. DAVIDSON: Excuse me, Judge, I'm going to
10:39:43 15 object as that being a misstatement. I believe the first
16 office in Augusta was December 10th of 2010.

17 MR. JOUBERT: I'm sorry?

18 MR. DAVIDSON: December 10, 2010, was the first
19 office visit, I believe.

10:39:54 20 MR. JOUBERT: And?

21 MR. DAVIDSON: I object to it being a
22 misstatement that she had been seeing him for several
23 months on Augusta. The first time she saw him in Augusta,
24 was December of 2010. That's the only point, Judge. It's
10:40:07 25 not a big deal.

Redirect-Richardson/By Mr. Joubert

1 THE COURT: All right. Then to the extent that
2 it's an error, I think it's a question, so restate the
3 question, please.

4 BY MR. JOUBERT:

10:40:13

5 Q. You started seeing Dr. Evans in 2010, and
6 Mr. Davidson was saying that it was December -- I'm sorry,
7 that it was December, I thought it was earlier. But at
8 any rate, this document is filled out on December 15th,
9 2010; correct?

10:40:28

10 A. Yes. Yes.

11 Q. Would you have seen him on December 10th also, five
12 days before?

13 A. I believe so, yes.

14 Q. You would have seen the doctor within five days?

10:40:38

15 Would you have seen him on December 10th and then again on
16 December 15th?

17 A. No, no, no. I only see him one time a month.

18 Q. Exactly. Let's look at the first question. How
19 often do you mood swings? Do you recall indicating that
20 you have them often?

10:40:53

21 A. Yes.

22 Q. Did anybody ever discuss that with you?

23 A. No.

24 Q. Anybody in Dr. Evans office?

10:41:00

25 A. No.

Redirect-Richardson/By Mr. Joubert

1 Q. Osman, Roland, Rhoda Mann?

2 THE COURT: Counsel, asked and answered.

3 BY MR. JOUBERT:

4 Q. What about the next question, how often do you

10:41:10

5 have -- have you felt the need for high dosage of
6 medication to treat your pain? You indicated sometimes?

7 A. Yes.

8 Q. Did anybody ever discuss that with you?

9 A. No.

10:41:18

10 Q. Including Dr. Evans?

11 A. No.

12 Q. Let's look at Number 5. How often is there tension
13 in the home? You indicated often. Did you ever discuss
14 that with Dr. Evans?

10:41:29

15 A. I discussed it briefly with Brenda.

16 Q. With Brenda?

17 A. Yes.

18 Q. Not Dr. Evans?

19 A. No.

10:41:37

20 Q. How often do you feel bored? Did you discuss that
21 with anybody? You indicated often?

22 A. I never discussed it with anybody, no.

23 Q. Look at answer to Number 9, how often have you taken
24 more pain medication than you were supposed to? You

10:41:52

25 indicated seldom?

Redirect-Richardson/By Mr. Joubert

1 **A.** Yes.

2 **Q.** Is that -- was that a truthful answer at the time?

3 **A.** Yes, it was.

4 **Q.** Did you ever discuss that with anybody, including
10:42:07 5 Dr. Evans?

6 **A.** No, not that, no.

7 **Q.** You've seen the photos of the so-called office notes,
8 I believe, that has the indication of the skeleton on
9 them --

10:42:20 10 **A.** Yes.

11 **Q.** -- et cetera, that you would fill out every time you
12 would go in?

13 **A.** Yes, sir.

14 **Q.** Who did you discuss those notes with, was it
10:42:32 15 Dr. Evans, or was it with one of the therapists?

16 **A.** It was one of the therapists. I mean, after the
17 initial visit with Dr. Evans, the longest you've ever seen
18 him was maybe two minutes, two, three minutes, tops. And
19 he would write or sign the prescriptions and that would be
10:42:58 20 it.

21 **Q.** Well, we saw that from the video. In fact,
22 Mr. Davidson made it a point to ask you how much time you
23 spent with Osman, how much time you spent with Roland
24 Rittmaster. He asked you how much time you spent on the
10:43:12 25 tape it showed you spent 18 minutes with Rhoda Mann,

Redirect-Richardson/By Mr. Joubert

1 didn't he?

2 **A.** He never asked me -- yes, he did, but he never asked
3 me how long I spent with Dr. Evans.

10:43:19

4 **Q.** Well, you're anticipating my question. So we saw
5 from the tape that Dr. Evans spent less than two minutes
6 with you when he came to see you, didn't he?

7 **A.** That was typical, yes.

8 **Q.** And that's typical of your average office visit?

9 **A.** Yes, sir.

10:43:31

10 **Q.** What about the dates with the arguments, how much
11 time did he spend with you?

12 **A.** Those, probably about five minutes, which is three
13 minutes than he usually spends.

14 **MR. JOUBERT:** One second, Your Honor.

10:43:58

15 **BY MR. JOUBERT:**

16 **Q.** I'd like to show you now, let's go to Page -- well,
17 I'll use the ELMO again, Bates 53, Bates Number 53 out of
18 your medical chart, which is Government's Exhibit 30. And
19 this is another one of the SOAPP test.

10:44:24

20 Incidentally, in your observation in
21 filling these out, number one, were they filled out each
22 time you went to see the doctor?

23 **A.** Yes, you filled them out while you were waiting to
24 see Osman or something like that.

10:44:36

25 **Q.** Once you would fill them out, who would you discuss

Redirect-Richardson/By Mr. Joubert

1 them with, if anyone?

2 **A.** Sometimes they would bring it -- Osman would bring it
3 up, that's about it.

4 **Q.** All right. Let me -- I'm not sure of the date on
5 this one, but this is from your file, your patient file.

6 **A.** Uh-huh.

7 **Q.** Government's Exhibit 30 and Bates Number 0063.
8 Question Number 14, "How often have others told you that
9 you had a bad temper?" You indicated "seldom"?

10 **A.** Yes.

11 **Q.** But, in fact, persons have told you you have a bad
12 temper, or at least sometimes according to your answer;
13 correct?

14 **A.** Yes.

15 **Q.** What about question Number 18, "How often in your
16 lifetime have you had legal problems or been arrested?"
17 You indicated "seldom"?

18 **A.** Yes.

19 **Q.** Now, was that truthful?

20 **A.** Yes.

21 **Q.** Well, we've heard today about your criminal history;
22 correct?

23 **A.** Yes.

24 **Q.** But my question was did anyone in Dr. Evans' office
25 ever discuss that with you?

Redirect-Richardson/By Mr. Joubert

1 **A.** No.

2 **Q.** Did anyone ever discuss with you the fact that you
3 had, in fact, had convictions for possession of narcotics?

4 **A.** No, they never did.

10:45:49 5 **Q.** Question 19, "How often have you attended an AA?" Do
6 you know what that is, "AA"?

7 **A.** Yes.

8 **Q.** Alcoholics Anonymous or narcotics anonymous meeting?

9 **A.** Yes.

10:46:03 10 **Q.** And you indicated seldom?

11 **A.** Yes.

12 **Q.** Now, seldom would indicate that you had sometimes;
13 correct?

14 **A.** Yes.

10:46:09 15 **Q.** Even though maybe minimally, you had, in fact,
16 attended one of those meetings?

17 **A.** I had, yes.

18 **Q.** Did anyone at Dr. Evans, including Dr. Evans ever
19 discuss that with you?

10:46:15 20 **A.** Oh, no.

21 **Q.** Let's go down to question 24, how often have you ever
22 been treated for an alcohol or drug problem? You
23 indicated seldom. Did anybody in Dr. Evans' office ever
24 discuss that with you?

10:46:27 25 **A.** No, never discussed.

Redirect-Richardson/By Mr. Joubert

1 Q. What is your opinion of these forms that you were
2 filling out for Dr. Evans?

3 MR. DAVIDSON: Objection, Judge. Relevance.

4 THE COURT: I'm going to sustain it. It's to
5 the form of the question.

10:46:38

6 THE WITNESS: In my opinion --

7 THE COURT: Excuse me.

8 THE WITNESS: -- it was just the paper.

9 BY MR. JOUBERT:

10:46:44

10 Q. You can't answer the question.

11 A. I'm sorry.

12 Q. Let me ask you, back in 2010, when you started seeing
13 the doctor and you had to actually fill these forms out,
14 what was your impression about why you were filling them
15 out?

10:46:56

16 A. Supposed to have been to screen for the medication, I
17 mean...

18 Q. When you say "medication," what kind of medication do
19 you mean?

10:47:05

20 A. The Roxicodone and Somas, Lortab.

21 Q. The narcotics?

22 A. Yes.

23 Q. Your impression was these tools, these SOAPPs and
24 you've heard the term COMM, the COMM form, your impression
25 was those were to be used as screening for a narcotics use

10:47:24

Redirect-Richardson/By Mr. Joubert

1 or misuse; is that correct?

2 **A.** Yes.

3 **Q.** My question is: Did anyone ever sit down and talk to
4 you about any of these forms that you filled out in
5 Dr. Evans' office?

10:47:38

6 **A.** Maybe once or twice the whole time I was there.

7 **Q.** And who would have been, if anyone?

8 **A.** Osman.

9 **Q.** Osman only?

10:47:46

10 **A.** Yes.

11 **Q.** The massage therapist?

12 **A.** Yes. He's the one that read the papers, but it was
13 like once or twice. Like I said, the whole time I was
14 there.

10:48:17

15 **MR. JOUBERT:** Just one second, Your Honor.

16 No further questions at this time, Your
17 Honor.

18 **THE COURT:** You may step down, ma'am. Thank
19 you very much.

10:48:39

20 **THE WITNESS:** Thank you.

21 **MR. JOUBERT:** Your Honor, may she be released
22 to return to Louisiana?

23 **THE COURT:** Any objections to the witness being
24 released?

10:48:50

25 **MR. DAVIDSON:** No, sir, Judge.

1 THE COURT: All right. Thank you. Let's
2 approach, counsel.

3 **(The following was held at sidebar)**

4 THE COURT: Any word?

10:49:19 5 MR. JOUBERT: I can check real quickly, Judge.

6 THE COURT: I just need to know if we need to
7 go ahead and take a break at this point, but if we do take
8 a break, you will have a witness at the end of the break.

9 MR. JOUBERT: Yes, sir, I think so, Your Honor.
10:49:31 10 I'll go outside to check, but should have at least the
11 expert here at the very least.

12 THE COURT: Let's do that before we take the
13 break. Make sure that somebody is here.

14 MR. OLLISON: I'll go check.

10:49:41 15 THE COURT: Make sure somebody is here because
16 I don't want to take a break and then we say we've still
17 got to take another 15, 20-minute break.

18 MR. JOUBERT: We asked the expert to be here in
19 case the other witnesses didn't show up.

10:49:54 20 THE COURT: He might have been on the same
21 freeway you and Mr. -- what's his name?

22 MR. DAVIDSON: I don't know what was going on
23 because --

24 THE COURT: I heard about it.

10:50:03 25 MR. DAVIDSON: It was crazy, and I didn't see

1 accidents.

2 MS. BOLEN: It was crazy.

3 THE COURT: Which one were you coming in.

4 MR. DAVIDSON: I came in on I-10.

10:50:12

5 MR. JOUBERT: I was on Houston Avenue.

6 MR. DAVIDSON: And then once you got to
7 downtown it was crazy.

8 THE COURT: There's disruption on Allen
9 Parkway.

10:50:22

10 MR. OLLISON: The expert is here in the
11 hallway.

12 THE COURT: So we can take a break and if you
13 don't have one of the fact witnesses we'll get underway.
14 All right. Let's take about 30 minutes.

10:50:33

15 MR. JOUBERT: Thank you, Your Honor.

16 THE COURT: Well, make it 25. That will be
17 about 11:15.

18 MR. JOUBERT: Okay. Thank you.

19 **(The following was held in the presence of the jury)**

10:50:49

20 THE COURT: All right, ladies and gentlemen,
21 we're going to take about a 20, 25 minutes until about
22 11:15 and we'll pick up with the next witness.

23 **(Recessed at 10:51 a.m.)**

24 **(The following was held before the jury)**

11:18:40

25 THE COURT: All right. Please be seated. If

1 the witness will come forward at this time, please.

2 MR. JOUBERT: The United States calls
3 Dr. Graves Owen, Your Honor.

11:18:56

4 THE COURT: All right. Stand right there. Do
5 you solemnly swear that the testimony you are about to give
6 will be the truth, the whole truth and nothing but the
7 truth, so help you God?

8 THE WITNESS: I do.

11:19:07

9 THE COURT: Please have a seat and I failed to
10 ask counsel in the session this morning, whether or not
11 there is any objection to the admission of a curriculum
12 vitae of the experts?

13 MS. BOLEN: No, Your Honor.

11:19:22

14 MR. JOUBERT: No, Your Honor. I had not
15 planned to offer it. Should we offer it or make it part of
16 the record?

17 THE COURT: Well, it's up to you, but I don't
18 think you need to spend an hour talking about all of his
19 accomplishments. That's part of the curriculum vitae.

11:19:36

20 MR. JOUBERT: I may need --

21 THE COURT: With all due respect to the doctor,
22 go ahead, proceed however you want to do it.

23 MR. JOUBERT: Thank you, Your Honor.

24 **GRAVES OWEN,**

25 after having been first cautioned and duly sworn, testified

Direct-Owen/By Mr. Joubert

1 as follows:

2 **DIRECT EXAMINATION**

3 BY MR. JOUBERT:

4 **Q.** Good morning.

11:19:46 5 **A.** Good morning.

6 **Q.** How are you, sir?

7 **A.** I'm fine, thank you.

8 **Q.** Would you state your name for the ladies and
9 gentlemen of the jury.

11:19:51 10 **A.** Graves Owen.

11 **Q.** Can you spell the last name?

12 **A.** O-w-e-n.

13 **Q.** Without telling us your address street, where do you
14 reside generally?

11:20:00 15 **A.** Round Rock, Texas.

16 **Q.** And are you a medical doctor by profession and
17 training?

18 **A.** Yes, sir.

19 **Q.** I want to talk to you first of all about your
11:20:10 20 background. Tell the jury where did you go to medical
21 school?

22 **A.** I went to medical school at the University of Texas
23 Medical School in Houston.

24 **Q.** And what year did you finish?

11:20:22 25 **A.** I finished in 1990.

Direct-Owen/By Mr. Joubert

1 Q. Prior to that, where had you graduated undergraduate
2 school?

3 A. At Southwest Texas State University known as Texas
4 State University or Texas State University.

11:20:37 5 Q. And what year did you finish that program?

6 A. 1986.

7 Q. What did you major in?

8 A. Chemistry.

9 Q. Now, after you finished medical school, here at the
11:20:52 10 University of Texas Health Science Center in Houston,
11 where did you do your residency?

12 A. I did my residency in here in Houston at the same
13 facility.

14 Q. And how long was that program, residency program?

11:21:07 15 A. One year of an internship in internal medicine and
16 three years in anesthesia residency.

17 Q. So how do you define your special assessment, is it
18 anesthesia?

19 A. That was my primary specialty and then I sub
11:21:23 20 specialized in pain management.

21 Q. What did you subspecialize in pain management?

22 A. I did a fellowship at the University of Pittsburgh
23 Medical Center from 1994 to 1995.

24 Q. So that's a three or four-year program?

11:21:49 25 A. It is a one-year, training from summer to summer.

Direct-Owen/By Mr. Joubert

1 Q. I beg your pardon? I was misreading. Thank you.

2 Now, let's talk a little bit your
3 experience and your background. When were you licensed to
4 practice medicine?

11:22:05

5 A. In 1990.

6 Q. And do you have any board certifications?

7 A. I'm Board Certified by the American Board of
8 anesthesiology.

9 Q. Any other certifications?

11:22:23

10 A. I'm a diplomat at the American Academy of Pain
11 Management.

12 Q. Tell the jury what that means, a diplomat?

13 A. It just means that you've past a test regarding the
14 content of pain management.

11:22:37

15 Q. But it is a licensure or certification?

16 A. It is a certification, not a licensure.

17 Q. And what are you -- in practical terms, what are you
18 certified for?

19 A. To treat acute chronic pain conditions.

11:23:01

20 Q. Are you also certified for outpatient management of
21 opioid dependency?

22 A. I was. I left -- I let the license go a few years
23 after selling my practice.

24 Q. At one time you were certified?

11:23:19

25 A. Yes, sir.

Direct-Owen/By Mr. Joubert

1 Q. Now, let's talk about your work experience. Tell the
2 jury about your experience from -- after you finished the
3 residency program at the University of Pittsburgh in '95.

4 A. I started my own pain management clinic in Round Rock
5 from 1995 until December of 2011.

6 Q. And what office was -- what was the title of the
7 office or name of it?

8 A. It was called the Texas Pain Rehabilitation
9 Institute.

10 Q. How long did you work there?

11 A. From 1995, until I sold it in December 2011.

12 Q. Since December 2011, what employment have you had or
13 even before 2011, in 2008, did you become -- start to do
14 work with a pain management group Paradigm Outcomes?

15 A. Yes. I became a medical director part time while I
16 was still practicing, and over time it grew and grew to
17 the point that it became a majority of my day's activity.

18 Q. All right. Then in 2011, did you become a member of
19 the advisory board for doctor safeguards?

20 A. Yes.

21 Q. I should have asked you this. Let me go back for a
22 minute. Just tell the jury that sentence or two what
23 Paradigm Outcome is or organization is.

24 A. Well, Paradigm has two divisions, one is catastrophic
25 spinal cord and brain injury, and the second division is

Direct-Owen/By Mr. Joubert

1 pain management. I worked in the pain management
2 division.

3 Q. And what about -- tell the jury what Dr. Safeguard
4 program is -- what kind of program is that?

11:25:06

5 A. Dr. Safeguard is a website that advises physicians
6 and office staffs about common schemes of trying to divert
7 drugs so that it improves the education of these kinds of
8 problems.

9 Q. Is that for profit or nonprofit organization?

11:25:26

10 A. It's a for profit. My participation is not -- I'm
11 not a paid person. I'm just an advisor on the board.

12 Q. Okay. Have you also been a panel member, a medical
13 review panel of the Texas Department of Insurance, a
14 division of Workers' Compensation?

11:25:46

15 A. Yes, sir.

16 Q. And what years have you been a member of that panel?

17 A. I don't remember the year I started, but it's been
18 several years.

19 Q. Have you also worked with the Texas Department of
20 Insurance -- well, division of Workers' Comp as arbiter?

11:26:00

21 A. I've been an arbiter for several years, yes, sir.

22 Q. Tell the jury what that means. I mispronounced an
23 arbiter is what?

24 A. An arbiter is someone who sits before a physician who
25 is accused of violating the standard of care or doing

11:26:19

Direct-Owen/By Mr. Joubert

11:26:38

1 something without medical necessity. We're a panel of two
2 physicians and an attorney for the division. And we hear
3 the physician's explanation for his acts, and then we
4 decide if there was a violation or not. And if there was
5 a violation, we come up with some kind of corrective
6 action that usually involves additional education and
7 possibly a monetary fee.

11:27:01

8 **Q.** Now, let's talk about your -- you have a number of
9 other -- are you a peer reviewer for pain medicine with
10 the Journal Academy of Pain Science -- Pain Medicine.

11 **A.** I'm a peer reviewer for the general pain medicine,
12 which is a journal for the American Academy of Pain
13 Medicine.

11:27:20

14 **Q.** And as to addiction medicine, have you worked from
15 2012 -- I'm sorry -- '11 until about 2013, in a limited
16 capacity -- I'm sorry -- limited to opioid dependency?

17 **A.** Yes, sir.

18 **Q.** Explain that just for a second, if you will, for a
19 minute. Does that include Suboxone treatment?

11:27:39

20 **A.** It was Suboxone treatment sometimes with
21 psychotherapy and we treated only opioid addiction. It's
22 all I was treating.

23 **Q.** Can you tell the jury why psychotherapy would be part
24 of your training or consideration for Suboxone treatment?

11:27:56

25 **A.** Because the Suboxone can curve the cravings, but they

Direct-Owen/By Mr. Joubert

1 need to learn different ways of coping with life and
2 stressors, instead of just taking a pill. So you're
3 trying to give them a structured foundation that helps
4 them to develop better life skills, so that you don't need
5 medication to be the sole treatment.

11:28:15

6 **Q.** Have you also worked on the military advisory board
7 for the office of disability at times -- official
8 disability at times?

9 **A.** I'm one of the -- I'm on the editorial panel for the
10 official disability guides.

11:28:30

11 **Q.** And have you also done work as an aviation medical
12 examiner examining airline pilots?

13 **A.** I do airline -- I do medical exams on pilots, but not
14 the airlines. I do the second and third class, which are
15 commercial and just private general aviation.

11:28:47

16 **Q.** Not commercial -- I mean, not the airlines?

17 **A.** Not the first class, which is going to be your United
18 and Southwest pilots.

19 **Q.** Right. Have you been an officer or member for the
20 Texas Pain Society?

11:29:05

21 **A.** Yes.

22 **Q.** What -- have you held a position with the Texas Pain
23 Society?

24 **A.** Yes. Currently I'm immediate past president for the
25 Texas Pain Society.

11:29:15

Direct-Owen/By Mr. Joubert

1 Q. Have you authored publications concerning neuropathic
2 pain and best practices?

3 A. I've lectured and authored many topics in pain
4 management.

11:29:34

5 Q. Have you testified previously in any forum as a
6 expert witness?

7 A. Yes, sir.

11:30:01

8 Q. Let's talk first about jury trials -- I'm sorry --
9 federal trials. Did you serve as an expert witness in
10 2007, concerning a trial of a Dr. Steven Schneider?

11 A. Yes, sir.

12 Q. Was that in Dallas, in Houston, Texas or where was
13 it?

14 A. Wichita, Kansas.

11:30:14

15 Q. Wichita. I'm sorry. Have you also served as an
16 expert witness concerning the trial of an anesthesiologist
17 last year in -- I'm not sure, was that in Fort Worth?

18 A. In Dallas.

11:30:40

19 Q. In Dallas. And was the doctor's name on or about
20 Ogee Keecoo (phonetic)?

21 A. Ogee Keecoo (phonetic), yes, sir, I think.

22 Q. Do you know how to spell that?

23 A. Not off the top of my head.

11:30:59

24 Q. All right. Have you also served as either an expert
25 or given testimony before the Texas Medical Board?

Direct-Owen/By Mr. Joubert

1 **A.** Yes, sir.

2 **Q.** And how many times have you done that, if you recall
3 approximately?

4 **A.** A few times. I don't remember exact number.

11:31:11

5 **Q.** And what about the Texas Board of Nursing, have you
6 given depositions or otherwise offered expert testimony in
7 depositions before the Texas Board of Nursing?

8 **A.** Yes, sir.

11:31:29

9 **Q.** Have you also appeared in Texas state administrative
10 hearings on the topic of pain management?

11 **A.** Yes, sir.

11:32:00

12 **Q.** Now, I would like to start your testimony, by going
13 over a couple of some terms and then we'll get into
14 substance of your testimony. First of all, I'd like you
15 to just tell the jury in your own words how you define
16 pain or how would you suggest the definition of pain be
17 defined?

11:32:18

18 **A.** Well, pain is a physical and emotional sensation, so
19 if I was to take a hammer and whack you in the big toe, we
20 know the toe trauma would cause your toe pain, but I bet
21 you'd have a strong emotional and negative emotional
22 reaction to me whacking your toe with a hammer, so pain of
23 any significance has an emotional quality to it. So if we
24 put it in context, if you're driving home today and you
25 notice you need gas and you pull in the gas station and

11:32:41

Direct-Owen/By Mr. Joubert

11:33:01

1 you notice the lotto is a hundred million-dollar lotto and
2 you buy your ticket and tonight those balls come off and
3 you got them all, you just one a piece of a hundred
4 million-dollar lotto. You're pretty excited. And I come
5 up and I whack you in the toe with a hammer. You still
6 have toe trauma and toe pain, but I bet you cope with it a
7 whole lot better after winning a hundred million dollars
8 than prior.

11:33:10

9 So let's flip that around. You didn't win
10 the money. You go home and there's a nasty letter from
11 the IRS, you didn't dot your I's, you didn't cross your
12 T's, and you've got a big penalty, plus interest, and you
13 don't have the money. You're pretty stressed out. And
14 they're going to seize all your property in a number of

11:33:28

15 weeks because you can't pay it, and I whack you in the toe
16 with a hammer. It's the same toe trauma, it's the same
17 toe pain, but your ability to cope with it has been
18 adversely affected by this external stressor, which comes
19 to the definition of what is suffering. Suffering is how

11:33:47

20 one copes with adversity. So if you have somebody who is
21 reporting very severe pain, but their pathology is not
22 very severe, what they're telling you is not that they're
23 physical pain is severe, but their suffering is severe and
24 you have to identify those elements that is contributing

11:34:08

25 to their suffering and help them.

Direct-Owen/By Mr. Joubert

1 So while we call ourselves pain
2 management, we're really suffering management, and when
3 you manage the suffering, medication use goes down, people
4 go back to work and they become much more functional.

11:34:24

5 **Q.** You anticipated my second question, which was going
6 to be the definition of suffering.

7 Let me ask you if you can also tell the
8 jury what they've heard talk about a diagnostic tool
9 called the SOAPP. Can you define it for the jury and
10 explain it?

11:34:54

11 **A.** The SOAPP is a self reporting questionnaire that is
12 predictive of somebody's risk factors to misuse controlled
13 substances in the future.

14 **Q.** Is it a standard tool of use in the risk -- I'm
15 sorry, managing risk and pain management?

11:35:13

16 **A.** It's a standard tool to assess risk. It's not
17 necessarily the only tool you would use to assess risk.

18 **Q.** Okay. Along with other tools?

19 **A.** Yes.

11:35:26

20 **Q.** In assessing a management -- pain management, is a
21 physical examination important?

22 **A.** Yes.

23 **Q.** Can you explain to the jury why?

24 **A.** Well, you want to take a good history so you can
25 understand the problem, you want to know what treatments

11:35:41

Direct-Owen/By Mr. Joubert

1 have been done before, and then you want to do a physical
2 exam to correlate the subjective report of their symptoms
3 with your anatomical or physical findings.

11:36:01

4 **Q.** All right. Can you explain to the jury now how you
5 define the term opioids and if you will, distinguish it at
6 the end of your definition from opiates.

11:36:31

7 **A.** Opioids, o-p-i-o-i-d includes all of the opioid
8 medications that affect the pain receptors in your body
9 called -- there are several different receptors -- and
10 opioids with an A or opioids that come directly from the
11 opium poppy plant, where opioid with an O includes the
12 opioid's with an A that comes from the poppy plant, but in
13 the manmade opioids, the semi-synthetic and synthetic
14 opioids.

11:36:52

15 **Q.** Can you explain -- will you explain to the jury,
16 please, distinguish just a couple of medicines your basic
17 generic hydrocodone and tell us whether that is an opioid
18 or -- and then also oxycodone?

11:37:13

19 **A.** Hydrocodone is a semi-synthetic opioid and oxycodone
20 is a synthetic opioid.

21 **Q.** And when you say semi synthetic, let's start with
22 hydrocodone. Does that mean it would include both natural
23 and manmade elements in the drug component?

11:37:35

24 **A.** Yes. It's not -- it does not occur naturally, a
25 chemist has to take that drug and take a precursor and

Direct-Owen/By Mr. Joubert

1 chemically react it to form hydrocodone.

2 **Q.** And as distinguished from oxycodone, which is --
3 well, you explain it, totally synthetic?

4 **A.** It's -- a chemist has to make it. It's a synthetic.

11:37:57

5 **Q.** Is there a difference essentially in the makeup
6 between hydrocodone and oxycodone?

7 **A.** Structurally, there's a difference, but the effects
8 upon a human has minor differences.

11:38:24

9 **Q.** All right. Now, I'd like to go -- just a couple
10 other things with you.

11 The jury's already heard some testimony
12 and speak in reference to standard of care. Can you tell
13 the jury how you define standard of care?

11:38:41

14 **A.** The standard of care is what a reasonable or prudent
15 physician would do in the same or similar circumstance.
16 And a reasonable prudent physician would look at the
17 evidence base literature as a foundation for how to apply
18 their treatment to somebody. So as we get smarter and
19 learn more things, we change the standard of care, so it
20 he evolves slowly over time as we get smarter.

11:39:03

21 **Q.** And can you give the jury maybe just one good example
22 how the standard of care has evolved in the last three
23 years in the 1990s, compared to today?

11:39:21

24 **A.** Well, the -- so in the '90s, there is no evidence for
25 or against opioids for the treatment of chronic pain. You

Direct-Owen/By Mr. Joubert

1 could pretty much just pull your opinion out of a hat.

2 But towards the early 2000s, we started developing risk

3 tools to try to figure out who was higher risk to abuse

4 their medication, and towards the mid of 2000, we started

11:39:44

5 getting analysis of the literature on opioids, which

6 basically said we don't have good evidence to treat pain

7 with opioids. So there is dangerous inherently with

8 opioids and there's other ways of treating pain that are

9 safer. So we started making sure you exhaust conservative

11:40:09

10 evidence based treatments before you go to high risk

11 nonevidence based treatment.

12 **Q.** Can you give the jury an example of how you would

13 exhaust some of the low risk types of treatment? What are

14 some of the low risk type of treatment?

11:40:30

15 **A.** The most evidence based low treatment is some form of

16 exercise to help you with your pain. Another evidence

17 based low risk treatment is a form of psychotherapy called

18 cognitive behavioral therapy.

19 **Q.** And if you can keep that simple, but yet explain it,

11:40:47

20 can you tell us what cognitive behavior therapy is?

21 **A.** Cognitive behavioral therapy is a way of relooking.

22 It's called cognitively restructuring the way you look at

23 your life and react to adversity. It develops -- helps

24 you develop coping strategies and basic life skills.

11:41:09

25 **Q.** Now, that sounds similar to a part of a definition

Direct-Owen/By Mr. Joubert

1 you gave to pain, that is earlier when you talked about a
2 physical component and emotional component. Would that be
3 a proper assessment?

11:41:27

4 **A.** Well, the cognitive behavioral therapy is helping you
5 with the emotional reaction to pain.

6 **Q.** Okay. And over time, in the last 20 years or so, has
7 cognitive behavioral therapy become more as you said,
8 earlier, I think, either not popular, but you recognize
9 the importance of it as part of the treatment plan?

11:41:50

10 **A.** It's been recognized, the evidence for it has only
11 gained in strength over time.

12 **Q.** Let's -- let me ask you just for one more definition.
13 Can you define for the jury, how you would define the word
14 "addiction"?

11:42:08

15 **A.** An addiction is a disease that has both environmental
16 and genetic elements to it. And basically, the disease of
17 addiction would be defined as cravings for the drug,
18 inability to self regulate. There's a country western
19 song that says, "one's too many and 12 is not enough."

11:42:45

20 Once you start to use your drug you start to escalate the
21 use and can't curb it.

22 And the third area would be continued use
23 despite self harm. You keep falling because you're
24 intoxicated, you keep having motor vehicle accidents. The
25 rest of the definition of addiction has to do with

11:43:01

Direct-Owen/By Mr. Joubert

1 tolerance. And anybody around opioids will get these
2 elements. So you can't distinguish somebody who is on
3 opioids because they're doing well, versus an addict based
4 on these other criteria.

11:43:13

5 The real ones that are important is the
6 craving, inability to self regulate, and continued use,
7 despite self harm.

11:43:34

8 **Q.** Okay. Now, some weeks ago, months ago, did I provide
9 to you a series of medical files to review, which were
10 taken from the office of Dr. Richard Evans?

11 **A.** Yes, sir.

11:43:59

12 **Q.** And we're going to talk about those in just a few
13 minutes, but let me go back to a couple more questions.
14 You talked about the conservative treatment, how you would
15 start treating a person with pain or severe pain. How
16 would you say that those contributors, conservative
17 evidence is exhausted? In other words, what things would
18 a pain management doctor do in order to exhaust the
19 conservative treatment before you would get into some
20 other treatment?

11:44:20

21 **A.** Well, the first thing is if I get a new patient is I
22 get all the pertinent previous records. And I would look
23 to see what treatments have been performed, how well,
24 they've been performed, and then I would look at for
25 consultations and what their opinions were and what

11:44:37

Direct-Owen/By Mr. Joubert

1 treatments, what medications have been tried or not tried.
2 And I would do an analysis of all these records to see
3 where the person was. And I might find that they said --
4 tell me physical therapy didn't work, but they only showed
5 up two times or three times and quit. And in that case,
6 physical therapy hasn't been exhausted and we need to go
7 back and do the fundamentals.

11:44:53

8 **Q.** Okay. Now, assuming let's say physical therapy has
9 been exhausted. Would consultation with other specialists
10 be one of the ways in which you would approach treating a
11 person conservatively?

11:45:12

12 **A.** Depending on the facts of the history and the
13 physical exam, I might consider cognitive behavioral
14 therapy. I might send them for an orthopedic cervical
15 consult or a neurological consult. It would just depend
16 on the situation.

11:45:30

17 **Q.** And as far as cognitive behavioral therapy goes,
18 would you -- would it be correct or proper to perhaps
19 refer a patient to a psychologist if necessary?

11:45:47

20 **A.** Yes.

21 **Q.** Now, let's make clear a definition of a psychologist
22 and a psychiatrist, which may be for our purposes, but to
23 see a psychologist, you would refer a patient in pain for
24 what purpose?

11:46:04

25 **A.** Well, a psychologist and psychiatrist both diagnose

Direct-Owen/By Mr. Joubert

11:46:24

1 mental health problems. But a psychologist only treats
2 with talk therapy and it focuses mainly on copying
3 mechanisms and the way you react to adversity and give you
4 fundamental skills on how to handle stress. Where a
5 psychiatrist is typically dealing with some kind of
6 chemical imbalance in the brain and is using
7 pharmaceutical agents to treat certain issues and they
8 could be used together. But as far as pain management
9 psychologist is the typical resource you use.

11:46:42

10 **Q.** Okay. So we've talked about obtaining the previous
11 medical records. Look at the medications they're getting,
12 perhaps use physical therapy, perhaps cognitive behavioral
13 therapy. Any other things you would look at before you
14 would escalate the treatment from a conservative level to
15 a more intense level?

11:47:00

16 **A.** Well, I would look at their risk factors for average
17 drug taking behavior.

18 **Q.** Tell the jury what risk factors are aberrant?

11:47:17

19 **A.** Besides whatever the SOAPP would tell you about their
20 risk factors. There are other risk factors that you
21 should consider, age less than 45 years old is a risk
22 factor. Personal or family history of alcoholism of
23 substance use disorders, of heavy use of nicotine,
24 depression, anxiety, impulse control disorders, like
25 obsessive compulsive disorders, like obsessive compulsive

11:47:42

Direct-Owen/By Mr. Joubert

1 disorder, attention deficient disorder, bipolar,
2 schizophrenia or personality disorders. And then hydro
3 vigilance phase, such as post traumatic stress disorder or
4 some kind of traumatic event in their past.

11:47:56

5 **Q.** And give the jury some example about how you define
6 family disorders, other than ADHD, ADD. Would that
7 include things like maybe going through a painful divorce
8 or during emotional period of time?

11:48:21

9 **A.** Any type of stressor like that could be equated to
10 your being in trouble with the IRS. Any type of stressor
11 can magnify your perception of pain and disability.

11:48:46

12 **Q.** And would it be fair to say on and off to compare --
13 well, I want to get to is. Can you tell the jury either
14 about reaching a -- what do you call it a threshold or a
15 level at which you would compare some of the symptoms,
16 that is, what they were originally, versus what they may
17 be subsequently?

11:49:00

18 **A.** Well, part of the review of the medical records would
19 be looking at what their baseline function was, what their
20 baseline physical exam were, and then comparing it to
21 where they are now.

11:49:18

22 **Q.** Baseline is what I was looking for. Thank you very
23 much. Now, if controlled substances were previously
24 prescribed for a patient, would that be a consideration
25 that you would make?

Direct-Owen/By Mr. Joubert

1 **A.** Yes.

2 **Q.** In assessing treatment?

3 **A.** Yes.

4 **Q.** How is that important?

11:49:25 5 **A.** Well, somebody comes in and they're saying -- they
6 tell me that they're on controlled substances. Well, even
7 more important to get the previous records because I want
8 to one verify that they truly are on those controlled
9 substances, that they prior to becoming, being placed on a
11:49:43 10 controlled substances that they've tried the other options
11 that are safer and evidence based, that I would make sure
12 that they hadn't had any aberrant drug taking behaviors
13 and -- such as early refill request or abnormal urine drug
14 test, and then I would make sure they truly had a
11:50:06 15 therapeutic document in the record.

16 **Q.** What is a therapeutic benefit?

17 **A.** Therapeutic benefit means what kind of benefit are
18 you getting from the treatment. If you have high blood
19 pressure and you come to me and I give you a blood
11:50:24 20 pressure pill and it normalizes your blood pressure where
21 I want that's a therapeutic benefit. A nontherapeutic
22 benefit would be I haven't improved your blood pressure
23 and we've got to do something different.

24 **Q.** Would weight be a consideration?

11:50:39 25 **A.** I don't --

Direct-Owen/By Mr. Joubert

1 Q. Fluctuation in weight or change in weight, would that
2 be a consideration for whether or not the person needed
3 having a therapeutic benefit from treatment or not?

4 A. Well, it depends if I was trying to do a weight loss
5 then that would be the goal I would be using for my
6 measure of therapeutic response. And when you're trying
7 to do pain management what you're looking for is
8 functional improvement.

9 Q. Let me ask you now, you've used a term a couple of
10 times and I didn't get you to explain it earlier, can you
11 explain the term aberrant drug behavior or test and how
12 that's used in evaluating a patient?

13 A. Aberrant behavior is a behavior you don't expect.
14 Aberrant urine drug test would be a urine drug test that
15 does not have the drug that you prescribed in it, or has
16 an illegal drug in it, or has a legal drug, but it wasn't
17 a drug prescribed by you, but it would be all aberrant
18 drug test. And an aberrant taking behavior would be a
19 drug test that is aberrant, but it could also be reporting
20 lost and stolen meds, asking for early refills, or other
21 kinds of activities, maybe getting drugs from more than
22 one doctor.

23 Q. And would it be correct to say that a physician
24 should look for a self escalation of an aberrant drug
25 behavior? In other words, if they're maybe running out of

Direct-Owen/By Mr. Joubert

1 medication early or going to other sources for medication?

2 **A.** Yes. Because addiction, one of the few things that
3 you can help you identify an addiction is their inability
4 to self regulate as we previously talked about. If they
5 start to self escalate and use more medicines than you're
6 prescribing, that's a warning sign that you may have an
7 addiction developing and you have to do some kind of
8 corrective analysis or correct the situation to try to
9 catch the problem before it gets out of control.

10 **Q.** Would doctor shopping be considered part of an
11 aberrant drug behavior?

12 **A.** Yes, sir.

13 **Q.** And tell the jury what you understand doctor shopping
14 to mean in your field?

15 **A.** Doctor shopping is when you go to multiple doctors to
16 get some kind of controlled substances and you're not
17 having a con- -- you may go to multiple doctors for these
18 drugs, while you still have an adequate supply of these
19 drugs on hand.

20 **Q.** Okay. Let's go now to a couple of other
21 explanations. Tell the jury what it's like -- well, how
22 would you define the practice of medicine in terms of the
23 way it relates to the medical history?

24 **A.** Well, we've all been to doctors, I suspect and we
25 know what doctors do if you complain to a new doctor you

Direct-Owen/By Mr. Joubert

11:54:08

11:54:25

11:54:40

11:54:55

11:55:13

1 go in, they're going to look at your records as we
2 previous discussed, they're going to ask you some history
3 of what's going on, what's wrong with you, with respect to
4 low back pain, it's either, who, what, when where, why
5 questions, how did you get hurt, when did you get hurt,
6 where does it hurt, does the pain radiate anywhere? Do
7 you have any numbness or weakness associated with the
8 radiating pain? Do you have any bowel or bladder
9 problems? Do you -- what treatments have you had before?
10 How did those treatments help or not help? Have you had
11 any consultations? Who did you see? Those kind of basic
12 questions so that you can understand what's called the
13 history of the present illness.
14 **Q.** In order to answer those questions, would a physical
15 examination be necessary?
16 **A.** Well, this would be the subjective part of the exam
17 we're talking about. The physical exam would come right
18 after that. So this is the questions you would ask to
19 understand better their disease process and their
20 symptoms. And then you correspond those symptoms they're
21 telling you about with the medical records you've gotten
22 from previous treatments. Then you do your physical exam.
23 **Q.** All right. Now, with respect to those records of
24 Dr. Evans that you've been able to review and I think I've
25 asked you, you reviewed approximately 17 or 18 records?

Direct-Owen/By Mr. Joubert

1 **A.** Yes, sir.

2 **Q.** Of his patient charts?

3 **A.** Yes, sir.

4 **Q.** What did you find with regard to the documented
5 medical history in those charts?

11:55:22

6 **A.** There was no adequate medical history documented in
7 the record.

8 **Q.** Can you tell the jury just a little bit more where
9 you say no adequate medical history, was there any at all?

11:55:34

10 **A.** There was very superficial history such as low back
11 pain after a car accident three years ago, or something
12 analogous to that.

13 **Q.** Whereabouts did you make an observation with regard
14 to those files you reviewed regarding urine drug tests,
15 what did you find?

11:56:01

16 **A.** Out of all of the charts, only one chart had a urine
17 drug test and it was a preliminary test that needed
18 confirmation.

19 **Q.** Okay. Can you explain to the jury what do you mean
20 by confirmation for a urine drug test?

11:56:15

21 **A.** There's two kinds of urine drug test ones kind of
22 like your urine pregnancy screen that you get for home
23 use, and the problem with that test for drugs in pain
24 management is that they have a lot of inaccuracies, a lot
25 of false positives and a lot of false negatives. And

11:56:37

Direct-Owen/By Mr. Joubert

1 you're supposed to send that to a laboratory that does a
2 test using mass spectrometry that's essentially a hundred
3 percent accurate so that you can confirm your results.

11:57:00

4 **Q.** Let's go back to the example that you gave us. After
5 you do those diagnostics, which are written out
6 subjectively by the patient and you get to the point that
7 you need to make an examination, a physical examination,
8 does a physical examination proper before you would
9 prescribe narcotic drugs?

11:57:14

10 **A.** Yes.

11 **Q.** Why?

11:57:27

12 **A.** It's part of what we do as physicians practicing
13 medicine, take a history, you review records, you take a
14 history, you do a physical exam, you make the diagnosis,
15 or you order diagnostic testing so that you can make a
16 diagnosis and then you prescribe a treatment.

11:57:47

17 **Q.** What about with regard to your review of those files
18 of Dr. Evans' patients, or at least their charts, and just
19 to be clear, you did not examine any patients; is that
20 correct?

21 **A.** Correct.

22 **Q.** You only reviewed medical charts?

23 **A.** Yes, sir.

11:57:54

24 **Q.** With regard to range of motion examinations, what did
25 you find among the records of Dr. Evans?

Direct-Owen/By Mr. Joubert

1 **A.** Only a few charts had range of motion. The vast
2 majority did not have any range of motion exam.

3 **Q.** With regard to those few charts you found with a
4 range of motion examination, was there sufficient evidence
5 for you to document the right range of motion in terms of
6 its accuracy?

7 **A.** Well, it was -- I was a little suspect of the range
8 of motion documentation because it was too precise, it was
9 like 21 degrees or 43 degrees, that's just -- that
10 requires using very accurate instruments to make such
11 numbers, and I just didn't see those -- that documentation
12 being as reliable as I'd like to have seen.

13 **Q.** Well, did you observe in the medical charts that you
14 reviewed, that a therapist of some type, even a massage
15 therapist, or physical therapy, actually conducted the
16 range of motion test?

17 **A.** Well, there were some documentation, but under what
18 was called massage therapy, but it wasn't real clear who
19 was doing the range of motion because that documentation
20 was in a different part of the page.

21 **Q.** Was it clear that as to the range of motion, was
22 there any direct indication that Dr. Evans in fact
23 conducted a range of motion test?

24 **A.** It was unclear.

25 **Q.** Now, with regard to a therapist conducting range of

Direct-Owen/By Mr. Joubert

1 motion, is a trained massage therapist -- well, let's --
2 let me first ask, is a person who is not totally trained
3 as a massage therapist, would they be either qualified or
4 sufficiently prepared to conduct a range of motion test?

11:59:56

5 **A.** No, sir.

6 **Q.** What about a massage therapist, would a typical
7 massage therapist be qualified to conduct a sufficient
8 range of motion test?

9 **A.** No, sir.

12:00:04

10 **Q.** What about a physical therapist?

11 **A.** Yes, sir.

12 **Q.** And tell the jury the distinction there between the
13 therapist and the training and why a physical therapist
14 would be the only one who would conduct an accurate range
15 of motion test?

12:00:23

16 **A.** Well, a physical therapist is trained on body
17 mechanics and how to measure range of motion and other
18 therapeutic exercises, so it's within their skill set to
19 know how to make such go arrangements.

12:00:36

20 **Q.** With regard to your review of Dr. Evans, did you see
21 any indication that a physical therapist conducted a range
22 of motion test?

23 **A.** I did not.

12:01:04

24 **Q.** With regard to your view of the files of the medical
25 charts of Dr. Evans, did you make an assessment with

Direct-Owen/By Mr. Joubert

1 regard to the pathology identified and whether that would
2 show pain?

3 **A.** Well, there's no diagnostic test that can prove
4 somebody has pain or doesn't have pain, but what I saw in
12:01:24 5 the records were reports of severe pain and pathology that
6 was nonspecific or mild in nature. So, what I saw was
7 evidence of the patient suffering and having more of an
8 emotional quality to their pain than a physical quality.

9 **Q.** Do you recall any files that you may have observed
12:01:47 10 where the description, that is the verbal or written
11 description of the level of pain, may have not been
12 consistent with what was documented in the file?

13 **A.** I did see evidence of symptom execration, if that's
14 what you're asking me.

12:02:04 15 **Q.** Yes. We'll get into that. Can you give the jury
16 some example of that?

17 **A.** I saw several times in which a patient reported their
18 worst pain is 10 out of 10, or 10 plus out of ten, and
19 that's just not going to be a reliable number. What that
12:02:23 20 means is, if you're saying you're pain is 10 out of 10, if
21 I woke up and kick you hard in the shin, you can't hurt
22 anyone. So that's not a real reflection of their pain.
23 It's a reflection of their suffering.

24 **Q.** And to the extent that a patient would report the
12:02:42 25 pain level of 10 out of 10, what would be the -- would

Direct-Owen/By Mr. Joubert

1 that dictate more of a necessity for the doctor to conduct
2 a physical exam?

3 **A.** Yes. Unfortunately, you have to rely a lot on
4 subjective self report when you treat pain. So when you
12:02:58 5 see something that is disconnect from what seems to be
6 common sense, you have to put your radar on and dig a
7 little deeper.

8 **Q.** Did you see any evidence that would support in the
9 medical charts that Dr. Evans would dig deeper, in terms
12:03:17 10 of making physical examinations to either explain, or to
11 support what was being reported by the patient?

12 **A.** I did not.

13 **Q.** Did you see any evidence that Dr. Evans made a
14 diagnosis in the records that was consistent with a proper
12:03:36 15 standard of care?

16 **A.** I did not.

17 **Q.** Now, in all due candor and fairness to Dr. Evans, I
18 think you told me that some of the tools or some of the
19 ways that you utilized standard of care today, or the way
12:03:56 20 you defined it, may have been different from the period of
21 time of most of the medical records you reviewed, that is
22 just a few years ago, 2011, 2012; correct?

23 **A.** Yes, sir.

24 **Q.** So I want to ask the question now, with regard to the
12:04:09 25 standard of care that would have been in place, not today,

Direct-Owen/By Mr. Joubert

1 but in 2011 and '12, did you find evidence that Dr. Evans
2 did or did not follow a proper had standard of care?

3 **A.** I found evidence he did not follow the standard of
4 care.

12:04:27

5 **Q.** Can you give the jury some examples of that?

6 **A.** He didn't get pertinent previous medical records.

7 **Q.** I'm sorry?

8 **A.** He didn't get all pertinent previous medical records.

9 **Q.** Okay.

12:04:38

10 **A.** There might be an X-ray or an MRI or a pharmacy page,
11 but there wasn't records from the previous -- from the
12 physicians that previously treated the person allegedly
13 with controlled substances. There was an inadequate
14 history, there was an inadequate physical exam. The only

12:04:59

15 physical exam I found was occasionally some range of
16 motion. Neurological exams and other nerve compression
17 exams were not performed. There was -- the risk
18 assessment tool that was used, the SOAPP was performed,
19 but it wasn't incorporated into the analysis of how you're

12:05:24

20 going to use this information and how it's going to
21 mitigate how you treat the person. And then there was no
22 reliable and clinical meaningful documentation of a
23 therapeutic benefit. And if you don't have a therapeutic
24 benefit you're nontherapeutically prescribing. And if you

12:05:47

25 don't have a therapeutic benefit, you don't have medical

Direct-Owen/By Mr. Joubert

1 necessity to keep that treatment. So the drugs were
2 prescribed without medical necessity.

3 Urine drug testing with the exception of one
4 case was not performed, and that urine drug test when it
12:06:02 5 was performed was aberrant. It was positive for marijuana,
6 and there was no corrective action taken for that aberrant
7 urine drug test.

8 Q. If a patient told Dr. -- well, if not -- if a patient
9 was using marijuana did not tell the doctor, but stated to
12:06:24 10 the jury that, in fact, he had a drug test in Dr. Evans'
11 office, which is not a -- well, let me rephrase the
12 question.

13 If a patient was using marijuana who saw the
14 doctor and that patient also had a drug test, but the drug
12:06:42 15 test or nothing in the file reflected the use of marijuana,
16 what would that suggest?

17 A. I'm a little confused by your question. Can you ask
18 me it differently?

19 Q. Yes. If a patient was using marijuana while seeing
12:06:58 20 the doctor and being prescribed narcotics, and did not
21 indicate it in a subjective test like a SOAPP, but stated
22 he did have a urine drug test with the doctor, is it
23 reasonable that the marijuana would have shown up in the
24 drug test?

12:07:16 25 A. If they're using marijuana, it will show up in the

Direct-Owen/By Mr. Joubert

1 drug test.

2 **Q.** If the patient was using marijuana and has admitted
3 so while seeing the doctor while on narcotics, would that
4 be an indication of an aberrant drug behavior?

12:07:32

5 **A.** Yes, sir.

6 **Q.** And what would be the proper course of treatment for
7 a patient under those circumstances?

12:07:45

8 **A.** Well, in Texas it's illegal to use marijuana, so
9 you'd have to approach the individual and say, this is not
10 an acceptable behavior, that you can either have your
11 drugs, or you're assuming they have a therapeutic benefit,
12 or I can't prescribe to you because I cannot in Texas give
13 you a controlled substances while you're also using
14 illegal drugs.

12:08:03

15 **Q.** Would it matter if the patient was from Louisiana?

16 **A.** It would not.

17 **Q.** You mentioned a minute ago that you saw evidence in
18 these patient charts of Dr. Evans that the SOAPP was
19 performed, and do you recall seeing some instances where

12:08:23

20 another diagnostic tool we've referred to in court as the
21 COMM, or the C-O-M-M test performed?

22 **A.** Yes, sir.

23 **Q.** I think you saw no indication that the SOAPP test or
24 diagnostic tool was integrated into the treatment for the
25 patient? Did I get that correctly?

12:08:42

Direct-Owen/By Mr. Joubert

12:08:56

1 **A.** Yes. It was scored and the score was put on the
2 document, but there was no analysis of what that means in
3 the context of the patient's history and how you're going
4 to adjust your treatment because of this risk or lack of
5 risk.

12:09:10

6 **Q.** If a patient indicated on the SOAPP that they had
7 mood swings, but then they were not -- the doctor did not
8 exam her or ask her about that, would that be an
9 indication -- I mean, is that the example of what you were
10 talking about, you found no evidence that the SOAPP was
11 integrated into the treatment?

12:09:26

12 **A.** In two different ways, yes, the total score wasn't
13 discussed and used in a critical thinking away, and then
14 mood swings could represent somebody who has a bipolar
15 disorder, which is a risk factor for aberrant drug take
16 behavior. So you want to go further and pursue that and
17 maybe get a psychological evaluation to make sure they
18 don't have a bipolar disorder, or what's causing their
19 mood swing.

12:09:41

20 **Q.** Do you recall reviewing a file, a patient chart for a
21 Kimberly Richardson?

22 **A.** Yes, sir.

12:09:55

23 **Q.** Without showing you the details in the file, if
24 Ms. Richardson scored on her SOAPP test -- I'll call it a
25 test -- the diagnostic tool, that she had seldom but still

Direct-Owen/By Mr. Joubert

1 some dependency or craving for drugs, what would that
2 suggest for you?

3 **A.** Well, craving is one of the signs that you have an
4 addiction that's either developed or it's in the
12:10:14 5 developing process and you want to go and talk to her
6 about it and try to tease out more information.

7 **Q.** So is that an area that a doctor properly examining
8 patients should get into?

9 **A.** Yes, sir.

12:10:25 10 **Q.** Do you recall reviewing the file of a patient by the
11 name of Calvin McDonald?

12 **A.** Yes, sir.

13 **Q.** And did you -- you may or may not recall, but if
14 there were indications that Mr. McDonald scored on his
12:10:36 15 SOAPP that he had cravings for drugs, would that be an
16 area that the doctor should get into and examine?

17 **A.** Yes, sir.

18 **Q.** Would some of the things that you just mentioned, an
19 inadequate history, inadequate physical exam, inadequate
12:11:05 20 neurological test, you only saw one drug test and the
21 SOAPP was not integrated into the treatment plan for the
22 patient, would that be, in your opinion, considered
23 nontherapeutic prescribing?

24 **A.** It's not the practice of medicine when you don't act
12:11:24 25 like a physician and practice medicine. Nontherapeutic

Direct-Owen/By Mr. Joubert

1 prescribing would be whether or not you got a therapeutic
2 benefit.

3 Q. And I should have made my question a little bit more
4 clearly, assuming that Dr. Evans was prescribing narcotics
12:11:40 5 drugs, Schedule II narcotic drugs, particularly oxycodone
6 and hydrocodone, but nevertheless, he inadequately had a
7 medical history and did not have physical exams or
8 neurological tests, those kinds of things, would that be,
9 in your opinion, would you say that Dr. Evans was

12:12:04 10 nontherapeutic prescribing without a medical necessity?

11 A. Yes, sir.

12 Q. Did you find evidence, or did you find a trend
13 whether you could observe in those files you reviewed,
14 that whether Dr. Evans made a proper diagnosis in those
12:12:21 15 cases?

16 A. I did not see a proper diagnosis.

17 Q. Without a proper diagnosis and if you write
18 prescriptions for Schedule II narcotics, is that
19 nontherapeutic prescribing without medical necessity?

12:12:36 20 A. Yes, sir.

21 Q. Is that prescribing outside the course of
22 professional practice as a doctor and not for a legitimate
23 medical purpose?

24 A. Yes, sir.

12:12:50 25 Q. Let's talk a little bit, did you see evidence in the

Direct-Owen/By Mr. Joubert

12:13:06

1 files that you reviewed that Dr. Patients -- I'm sorry,
2 that Dr. Evans would start off seeing a patient in his
3 office maybe monthly in the beginning, but there would
4 come a time when he would begin to see them once every
5 three months. Do you recall that trend?

6 **A.** Yes, sir.

12:13:19

7 **Q.** With regard to follow-up visits, what would be
8 important for Dr. Evans to do or any doctor, who would see
9 a patient once every three months? Would a physical exam
10 be important to conduct?

11 **A.** Yes.

12 **Q.** Did you see any evidence that Dr. Evans conducted a
13 physical exam?

14 **A.** I did not.

12:13:28

15 **Q.** That is --

16 **A.** Other than the occasional range of motion.

17 **Q.** And I was specifically asking about those cases where
18 a patient would only come in every three months.

12:13:42

19 Now, let's go back for a second to one of your
20 points earlier about some of the diagnostic tools that
21 Dr. Evans used in the notes indicated that the patient's
22 pain level either did not get better, or it actually
23 increased over months or over periods of time. When the
24 pain goes up, what does that tell the doctor, or what
25 should it tell the doctor?

12:14:00

Direct-Owen/By Mr. Joubert

1 **A.** That you're not achieving a therapeutic benefit.

2 **Q.** That is not achieving a therapeutic benefit from the
3 prescribed controlled substances?

4 **A.** Yes, sir.

12:14:10

5 **Q.** And then would it be correct to suggest that
6 alternative forms of treatment would then be either
7 necessary or required?

8 **A.** Yes, sir.

12:14:22

9 **Q.** Let me ask you about with regard to persons who are
10 showing an aberrant drug behavior, such as injecting
11 themselves in the hands with a controlled substance or if
12 a family member actually called Dr. Evans' office and
13 reported that a family member was injecting drugs in the
14 hand, would that be an indication of an aberrant drug
15 behavior?

12:14:45

16 **A.** Yes, sir.

17 **Q.** Would it likely by an indication of addiction?

18 **A.** Yes, sir.

12:14:52

19 **Q.** What would be the proper followup that the doctor
20 either should know or should conduct if he saw a patient
21 within a couple of days of a family member calling in
22 complaining about this patient shooting drugs in their
23 hand?

12:15:10

24 **A.** Well, you would have to stop prescribing their drug
25 of choice and you would refer them to an addiction

Direct-Owen/By Mr. Joubert

1 treatment facility so they can get it taken care of.

2 **Q.** Would it accomplish a proper -- well, would it be a
3 proper standard of care to give another prescription to
4 that same patient within a day or two after a family
12:15:27 5 member has called the office and has documented that the
6 patient is injecting drugs, would it be proper standard of
7 care to write a prescription and then terminate the
8 patient or fire the patient?

9 **A.** It would not be the standard of care to reissue the
12:15:44 10 prescription from their drug of choice because you're just
11 enabling their addiction problem.

12 **Q.** Well, let's say that the doctor reduced the dosage of
13 oxycodone or Roxicodone for that same patient, he reduced
14 the dosage by about 60 pills, but nevertheless gave them
12:16:01 15 another prescription and told the patient that they were
16 giving them prescriptions simply to manage their
17 withdrawals, would that be a proper standard of care?

18 **A.** No, sir, there's other ways you can manage opioid
19 withdrawals without giving them an opioid.

12:16:15 20 **Q.** Well, let's be candid now. When you say there are
21 other ways, are you saying that the way that in my example
22 that Dr. Evans would have handled the situation, assuming
23 I was correct, would that be one way and there would be
24 other alternative ways?

12:16:31 25 **A.** You would not want to give the person who is

Direct-Owen/By Mr. Joubert

12:16:48

1 injecting oxycodone a prescription of oxycodone because
2 they've lost control. They're doing very, very dangerous
3 behaviors and they could accidentally kill themselves with
4 the next injection. So you don't want to allow them to
5 have a drug they've lost control over. You could give
6 them Suboxone or you could give Clonidine and Bentyl to
7 manage their withdrawal symptoms.

12:17:06

8 **Q.** If there's no indication in the patient's file that
9 the doctor gave them Suboxone or any other treatment,
10 would that be considered, for lack of a standard of care
11 or improper standard of care?

12 **A.** Yes, sir.

12:17:18

13 **Q.** Would it also be an indication that that prescription
14 that Dr. Evans gave the patient when he did see her, and
15 then noticed the injection marks on the hand, would that
16 be a prescription that's written outside the course of
17 professional practice and not for legitimate medical
18 purpose?

19 **A.** Yes, sir.

12:17:37

20 **Q.** Before I went through the last series of questions
21 about the example of a person injecting drugs, I was
22 asking about functionality and when the diagnostic tools
23 in a patient's chart indicates that the pain is going up,
24 what does that usually indicate about the function of the
25 patient?

12:17:58

Direct-Owen/By Mr. Joubert

1 **A.** Typically when pain is reduced, function goes up.
2 And if pain increases, function goes down. I went and
3 looked at all the outcome literature in pain management
4 and -- that looked at functional improvement and pain
5 reduction, there's a pretty strong correlation that when
6 pain goes up, function goes down and vice versa.

12:18:15

7 **Q.** Would it be correct to say, then, in the chart of
8 Kimberly Richardson, she consistently indicated that her
9 pain score, at least the subjective SOAPP was at a 10 and
10 it remained at a ten, would it be incumbent upon the
11 doctor to find some other form of treatment, or to take
12 some other approach, other than simply refilling or
13 writing new prescriptions every month?

12:18:31

14 **A.** I think you misused SOAPP in there. I think you're
15 talking about the 0 to 10 pain scale was 10 out of 10.

12:18:48

16 **Q.** Yes. I'm sorry. You're correct. Thank you for
17 correcting me.

18 **A.** So if you're still at 10 out of 10 pain, one you know
19 it's symptom execration and you need to be addressing the
20 suffering. And, two, if they're constantly having 10 out
21 of 10 pain, you're not achieving a therapeutic benefit.
22 So you need to move in a different direction.

12:19:03

23 **Q.** And what would be a different direction?

24 **A.** Well, not everybody's pain responds to pain
25 medicines, surprisingly. So you would go back to the

12:19:21

Direct-Owen/By Mr. Joubert

1 fundamentals and look at exercise and cognitive behavioral
2 therapy. There may be injections that are possible. It
3 just depends on the context.

12:19:39

4 **Q.** And I notice that you often come back to the idea of
5 not achieving "a therapeutic benefit". Can you tell the
6 jury why it's important to look for achievement of a
7 therapeutic benefit?

12:19:56

8 **A.** Because I'm prescribing something, I'm prescribing a
9 treatment, and that treatment has to produce a therapeutic
10 benefit, a good outcome. That's what I'm trying to do,
11 I'm trying to get my patient better. And when you give a
12 treatment that doesn't produce a good outcome, you don't
13 have medical necessity to continue it. So you have to
14 change gears and go in a different direction.

12:20:15

15 **Q.** And if a patient such as Kimberly Richardson would
16 indicate consistent level of 10 out of 1 to 10 pain
17 levels, would that suggest that there was no therapeutic
18 benefit being achieved by the previous prescriptions?

19 **A.** Could you say that again? I lost concentration.

12:20:36

20 **Q.** I'm sorry. It's not a very good question. I just
21 wanted to be clear that, are you saying then that if
22 Kimberly Richardson indicated that her pain level was 10
23 out of a level of possible 1 to 10, would that be an
24 indication she was not receiving a therapeutic benefit?

12:20:54

25 **A.** That's one indication, yes, sir.

Direct-Owen/By Mr. Joubert

1 Q. And would it be within the standard of care or --
2 well, let me withdraw that.

3 Would it be practicing medicine properly
4 to continue to issue prescriptions for Schedule II
5 narcotics such as oxycodone to her?

12:21:08

6 A. It would not.

7 Q. You saw within the medical files that you reviewed
8 from patients of Dr. Evans, there were a number of
9 prescriptions that were copies of prescriptions, is that
10 correct?

12:21:27

11 A. Yes, sir.

12 Q. Tell the jury why it's important to put copies of the
13 prescriptions in a patient chart or file?

14 A. It's important to have copies of a prescription in
15 your chart. One is a record of when you prescribed, but
16 also as a record should somebody alter your prescription
17 down the road, you know what you wrote on the
18 prescription.

12:21:39

19 Q. So to the extent that Dr. Evans made photocopies of
20 the prescriptions, that was within the standard of care,
21 would you say?

12:21:54

22 A. Yes, sir.

23 Q. Now, in looking at those prescriptions, did you
24 notice a trend that many of the prescriptions were for at
25 least one form of oxycodone, at least one form of

12:22:08

Direct-Owen/By Mr. Joubert

1 hydrocodone, and then it would also include other drugs,
2 such as the benzodiazapine that would be Valium or -- I
3 don't think he ever had Xanax, but did you see a trend
4 where those usually were prescribed together?

12:22:30

5 **A.** Yes, sir.

6 **Q.** Can you first tell the jury what is a benzodiazapine?

7 **A.** A benzodiazapine is a tranquilizer. It works on your
8 brain kind of like alcohol does.

12:22:47

9 **Q.** How does it work in conjunction with oxycodone or
10 and/ or hydrocodone?

11 **A.** Well, they're both sedatives. So it gives an extra
12 punch to the euphoria or the high associated with opioids.

13 **Q.** It gives an increase to the high associated with
14 opioids?

12:23:07

15 **A.** Yes, sir.

16 **Q.** Did you also see prescriptions that would include
17 Lortab which is hydrocodone, Roxicodone which is
18 oxycodone, a benzodiazapine, usually Valium and perhaps
19 Soma?

12:23:24

20 **A.** Yes, sir.

21 **Q.** And sometimes Mobic?

22 **A.** Yes, sir.

23 **Q.** Now, in your experience, when you see those types of
24 drugs together, how would you describe that prescription

12:23:39

25 or those groups of prescriptions? What do those

Direct-Owen/By Mr. Joubert

1 constitute?

2 **A.** Excluding Mobic, the use of Soma with the
3 benzodiazapine and some form of opioid is a very popular
4 drug cocktail.

12:23:52

5 **Q.** And how popular is that drug cocktail? Is there in
6 fact a version of it known as the Houston cocktail?

7 **A.** Yes, sir.

8 **Q.** What Dr. Evans was prescribing, would that be
9 considered a Houston cocktail, if you know?

12:24:09

10 **A.** Well, it would be version 2.0 of the Houston
11 cocktail. The hydrocodone was substituted with oxycodone
12 or oxycodone was added to hydrocodone, and the Xanax was
13 replaced with Valium.

12:24:26

14 **Q.** Okay. Would that be the same as saying that when
15 this so-called Houston cocktail first started, the
16 combination was hydrocodone, a tranquilizer such as Valium
17 or Xanax, as well as Soma?

18 **A.** Yes, sir.

12:24:44

19 **Q.** And today -- well, and in your observation and review
20 of the patient files of Dr. Evans, when you looked through
21 those patient charts, the 17 or 18 that you reviewed, did
22 you see consistently that at least three of those drugs
23 were always prescribed in combination?

24 **A.** Yes, sir.

12:24:59

25 **Q.** And would those be some form of oxycodone, usually

Direct-Owen/By Mr. Joubert

1 Roxicodone, and then Lortab or some Lorcet in the form of
2 hydrocodone, and then Soma?

3 **A.** Yes, sir.

4 **Q.** And Valium?

12:25:13

5 **A.** Yes, sir.

6 **Q.** Now, in your professional practice and opinion, if a
7 doctor is prescribing this cocktail, that is a group of
8 those drugs we just talked about, a combination, should
9 the doctor -- does the doctor have a diligence or a
10 responsibility to know that that is a popular cocktail for
11 use?

12:25:41

12 **A.** Yes, sir.

13 **Q.** And I didn't ask you that, but are these -- this
14 concept of this term cocktail, is that, in fact, street
15 language for drugs of abuse?

12:25:56

16 **A.** Yes, sir.

17 **Q.** And so, back to my question, does a doctor have --
18 should Dr. Evans know or should have known, that he was
19 prescribing a cocktail that was highly abused in the
20 street?

12:26:11

21 **A.** Yes, sir.

22 **Q.** I'd like to talk just briefly about multisite pain in
23 terms of a diagnostic tool, and what it means that a
24 doctor should or should not do if there was multisite pain
25 indicated.

12:26:36

Direct-Owen/By Mr. Joubert

12:26:50

1 **A.** Yes, sir. When the somebody presents with multisite
2 pain, they's got neck pain, they have low back pain and
3 maybe other areas of pain. There are many reasons you
4 could have multisite pain. So you have to come up with a
5 list of these reasons. It's called a differential
6 diagnosis, and then you systematically work through and
7 try to eliminate the causes that might be going on to
8 produce this diffused pain problem.

12:27:08

9 **Q.** In your review of the files of some of the patients
10 of Dr. Evans, did you see indications that many patients
11 had historical injuries, that is, injuries which had
12 occurred five years or more prior to the time that they
13 were seeing the doctor?

12:27:20

14 **A.** Yes, sir.

15 **Q.** And, in fact, were many of the injuries indicated to be
16 the result of automobile accidents?

17 **A.** Yes, sir.

18 **Q.** Or some type of a blunt trauma?

19 **A.** Some type of trauma, yes, sir.

12:27:33

20 **Q.** Did you see any records indication in the files that
21 you reviewed, that Dr. Evans made it a point to verify,
22 other than getting those historical patient records, did
23 Dr. Evans make any effort to verify by way of a physical
24 examination the current state of those alleged historical
25 injuries?

12:27:53

Direct-Owen/By Mr. Joubert

1 **A.** I did not.

2 **Q.** Can you tell the jury with regard to multisite pain,
3 what differential diagnosis would be?

4 **A.** The multisite pain could be caused by a thyroid
12:28:13 5 problem, or a perithyroid problem, it could be caused by
6 rheumatological problems like ankylosing spondylitis,
7 Lupus, multiple sclerosis. It could she caused by
8 fibromyalgia. It could be caused by opioid induced
9 hyperalgalia in which the pain medication can actually have
12:28:32 10 you have more pain, or it can be psychological pain from
11 severe depression or other psychological issues. And
12 you'd want to work through trying to figure out and
13 eliminate this list, so that you can understand what's
14 really driving the pain problem.

12:28:49 15 **Q.** So if a patient by the name of Kimberly Richardson
16 reported to the doctor that she was suffering with Lupus,
17 would that be an indication -- well, and she also reported
18 that her pain level was consistently 10 of 10, would that
19 be something that the doctor should take in consideration?

12:29:07 20 **A.** Yes. And you might want to get a rheumatology
21 consult to try to help you understand the Lupus is out of
22 control or is it managed well.

23 **Q.** But with regard to your comment earlier, if I
24 understood you correctly to continue to prescribe opioid
12:29:24 25 such as oxycodone and hydrocodone, would that perhaps in

Direct-Owen/By Mr. Joubert

1 fact, irritate or inflame the Lupus or some of the other
2 conditions?

3 **A.** Well, opioids can cause more pain, so they could be a
4 compounding variable that you have to consider.

12:29:41

5 **Q.** Right.

6 **A.** And that's called opioid induced hyperalgesia.

12:29:56

7 **Q.** Well, let's talk about if a patient reported,
8 Number 1 we talked about the patient who was injecting
9 oxycodone in their pants and if they also showed a history
10 of fibromyalgia, would that be an indication that the
11 doctor should look for some other alternate form of
12 treatment?

12:30:14

13 **A.** Well, the treatment guideline by the American College
14 of Rheumatology for fibromyalgia, does not recommend using
15 opioids to treat fibromyalgia, so if somebody's got
16 fibromyalgia, they would not be may good candidate for
17 opioids.

18 THE COURT: Can you mark your position, mark
19 your spot?

12:30:31

20 MR. JOUBERT: Yes, Your Honor.

21 THE COURT: All right. Let's go ahead and take
22 lunch. Let's be back in at 1:45, please.

23 **(The following was held out of the presence of the jury)**

12:31:37

24 THE COURT: You may step down, sir. You may be
25 excused. I'm just trying to get my notes right.

Direct-Owen/By Mr. Joubert

1 MR. JOUBERT: Thank you, Your Honor.

2 **(Recessed at 12:31 p.m.)**

3 MR. JOUBERT: Your Honor, my paralegal wants to
4 be sure that by turning it down, you meant the temperature
01:49:54 5 would go up?

6 THE COURT: That means the temperature will go
7 down. No, by turning the temperature up, yeah, we will
8 turn it up then. But I'm comfortable. Please be seated.
9 Who got wet? The temperature outside dropped, obviously,

01:51:04 10 that means that we're sensitive to that with the unit
11 upstairs, and so the temperature in here seems to be
12 dropping. We're going to try to make an adjustment so that
13 we don't freeze you out, but if you feel like you're
14 getting a little bit too cool, and I know that drops down
01:51:21 15 on the back of your neck, we'll just take a short break and
16 then kind of go outside and turn around and come back in
17 and see if that, would. Please have a seat. All right.
18 We're ready to proceed, I think.

19 Mr. Joubert, whenever you're ready.

01:51:38 20 MR. JOUBERT: Thank you, Your Honor.

21 BY MR. JOUBERT:

22 Q. Dr. Owen, before the lunch break, we were talking
23 about -- I asked you about pain being rated, do you
24 remember I had questions about if pain is rated say 10
01:51:59 25 out of 10, was that an indication of not achieving a

Direct-Owen/By Mr. Joubert

1 therapeutic benefit from the medication?

2 **A.** Yes, sir.

3 **Q.** Well, I failed to ask you about -- it came to my
4 attention that even if the pain is not rated at 10 out of
5 10, let's say it's 6 or 7 out of 10 in that area for a
6 range of time and it appears not be getting any better,
7 would that also indicate that the patient is not achieving
8 a therapeutic benefit?

9 **A.** If there's not a significant change in the pain, yes,
10 sir.

11 **Q.** Okay. If not a significant change, whether it
12 remains the same or fluctuates just a little?

13 **A.** Yes, sir.

14 **Q.** Let me ask you now if -- do you recall in the files
15 you reviewed the patient charts for Dr. Evans, was there
16 indication of at least one or more patients who may have
17 been the subject of a sexual abuse?

18 **A.** There was at least one that I remember.

19 **Q.** In a situation like that, is that a situation that
20 would call for more attention being given to the way the
21 pain is described by the patient or the -- well, the
22 circumstances under which a prescription is given?

23 **A.** Yes, sir.

24 **Q.** And if you will, tell the jury again what type of
25 further either investigation or further questions the

Direct-Owen/By Mr. Joubert

1 physician would have asked or should have asked in a
2 situation like that?

01:54:03

3 **A.** Well, sexual abuse is a risk factor for aberrant drug
4 pain behavior. When you're repetitively abused, sexually
5 or otherwise, you develop kind of a hypervigilant state
6 and you kind of similar to post-traumatic disorder, and
7 your nervous center is wound really tight and you're
8 fearful all the time. So you're at risk to use these
9 drugs to self medicate that fear and anxiety. So you

01:54:24

10 would try to the mitigate that by getting some intensive
11 psychotherapy to help that person bring things into order
12 and wind down their nervous system.

01:54:44

13 **Q.** In your observation and review of the patient charts
14 from Dr. Evans, did you see any indication that any
15 patients were referred for any type of psychological
16 treatment or --

17 **A.** I did not.

01:55:03

18 **Q.** And I'd like to talk just a little bit more. You
19 mentioned this earlier in talking about multisite pain, I
20 think you may have alluded to, or at least suggested to
21 me, that opioids can cause pain to spread from one or more
22 sites, is that correct? Did I understand you correctly?

23 **A.** Yes, sir. It can cause pain to spread for multiple
24 sites. It can make your pain more intense.

01:55:20

25 **Q.** What about -- can you tell the jury about the term

Direct-Owen/By Mr. Joubert

1 radiculopathy? Am I pronouncing that correctly?

2 **A.** Yes, sir, radiculopathy.

3 **Q.** Okay. What is that and --

4 **A.** That's a special kind of pain, nerve pain from a
5 compressed nerve in the spine, and it runs down your arm
6 or down your leg in a very special distribution that
7 follows the nerve maps that we have developed over the
8 years.

9 **Q.** Is that fairly common by a bulging disc or

10 degenerative disc in the map?

11 **A.** No, sir.

12 **Q.** Okay. Well, then let's talk about disc pain. If a
13 person has -- coincidentally, I should ask you in
14 reviewing the file of Dr. Evans, did you see that a fair
15 number of the charts indicated that the patients had some
16 type of degenerative disc disease or bulging disc?

17 **A.** Yes, sir.

18 **Q.** And is it uncommon for persons who are, let's say
19 even over 30 or 35 years old, to have any bulging discs or
20 degenerative disc disease?

21 **A.** It's very common to have these nonspecific findings
22 in people without back pain. And it's age related and
23 it's also if you follow these people throughout the years,
24 you cannot predict who will develop back pain because they
25 had degenerative disc disease or bulges or even

Direct-Owen/By Mr. Joubert

1 herniations that are not symptomatic. So the best we can
2 say is that these are nonspecific findings that you
3 commonly find in people with and without pain.

01:57:27

4 **Q.** I'm thinking now about your testimony earlier where
5 you indicated -- I asked you a question whether you found
6 in your review of the files a number of files with
7 historical, or let's say medical documentation, a history
8 going back more than five years. And also I think I asked
9 you about persons who may have had a bad car accident.

01:57:52

10 Would a disc problem or a degenerative
11 disc disease be the kind of thing that you would expect,
12 let's say even if you did not have a bad car accident or,
13 you know, if you didn't have this historical medical
14 problem? Am I making myself clear?

01:58:10

15 **A.** Yes, sir. You can find these kind of nonspecific
16 abnormalities in people who have never had any serious
17 injuries and they don't have any pain. So you have to be
18 very careful when somebody has pain and you see these
19 findings that they may or may not be a problem. And the
20 literature has advanced quite a bit over the last 10-plus
21 years, and we now are very comfortable in saying that
22 these are nonspecific findings.

01:58:30

23 **Q.** In fact, as to degenerative disc disease, is it no
24 longer considered a reliable cause for pain?

01:58:48

25 **A.** Correct. And surgery for degenerative disc disease

Direct-Owen/By Mr. Joubert

1 in discogenic discs are no longer recommended because the
2 outcomes are so poor.

01:59:11

3 **Q.** Can you explain to the jury just a little bit more
4 and in layman's terms, are you saying essentially that
5 most of us are going to have some problems with our backs
6 as we get older, and to the extent that they may be
7 reflected or it may be given to a doctor, a pain
8 management doctor as the basis for a person coming to see
9 the doctor, would that be a cause for the pain doctor to
10 pay more attention to that, to see if it's really valid
11 or -- am I correct?

01:59:33

01:59:52

12 **A.** Well, 85 percent of us will have back pain that we
13 can't find the cause of because the pathological model
14 that we have had in the past is incomplete at best case,
15 or at worse, it's just wrong. So when somebody has back
16 pain, you've got to be very cautious to say it's coming
17 from the disc because that model is eroding away. It's
18 got lots of evidence against it and almost none evidence
19 for that.

02:00:10

20 With the exception of a disc pinching a
21 nerve, causing what would be called commonly sciatica or
22 more specific a radiculopathy and that's a surgically
23 reversibly condition.

24 **Q.** And the proper treatment for that would be surgery?

02:00:23

25 **A.** First rest, and then surgery, and you could do an

Direct-Owen/By Mr. Joubert

1 injection of steroid in between.

2 **Q.** Okay. Now, can you tell the jury a little about the
3 different kinds of treatment for pain categories?

4 **A.** There's three basic categories for pain treatment.

02:00:48

5 Interventional, rehabilitative and pharmaceutical.

6 Interventionally you have procedures like surgery or

7 injections, from a rehabilitative standpoint you have

8 treatments such as physical therapy, occupational therapy,

9 yoga, Pilates, some form of exercise, swimming, you can

02:01:11

10 have psychotherapy, which cognitive behavioral therapy is

11 the primary type of treatment, and then pharmaceutical,

12 you have a whole vast of types of pharmaceutical agents

13 you can treat with.

14 **Q.** So, interventional, which means injection or surgery,

02:01:35

15 rehabilitation would be light to moderate exercise and

16 pharmaceutical?

17 **A.** Different types of exercises combined with plus or

18 minus different ways of thinking about your pain.

19 **Q.** All right. Now, in assessing pain, when someone

02:01:57

20 reports pain, you mentioned earlier when you were

21 describing suffering, can you tell us a little bit about

22 the psychological component of that, can you tell the jury

23 a little bit more about how you would -- when you would

24 find it necessary to refer a person for psychological

02:02:19

25 assessment?

Direct-Owen/By Mr. Joubert

02:02:34

1 **A.** Well, if there's any disconnect between their
2 objective findings and their self report, I would want a
3 psychological input to help me figure it out. There's a
4 number of questionnaires you can do to screen for
5 depression, anxiety, maladaptive coping mechanisms and
6 various other issues that could magnify the perception of
7 pain and disability.

02:02:52

8 **Q.** In your review of the patient charts from Dr. Evans,
9 did you find instances in which it appeared that a patient
10 had expressed some need or some concern of a psychological
11 nature, but there appeared to be no followup within the
12 patient chart that the patient either was referred to a
13 psychologist or any other type of alternative treatment?

02:03:16

14 **A.** Yes, sir. I never saw any evidence that alternative
15 treatments were offered or taken up on.

16 **Q.** Let's talk a little bit more about you mentioned
17 addiction earlier today. With regard to addiction, would
18 a lack of employment possibly be an indication that a
19 person may be addicted if they're on heavy narcotics?

02:03:45

20 **A.** Well, if they're disabled and there's not any
21 pathology to explain their disability, it would imply that
22 they have some unstable behavioral issues, plus or minus
23 an addiction. There's a whole array of possibilities to
24 explain why they perceive themselves as disabled, not
25 necessarily addiction alone.

02:04:08

Direct-Owen/By Mr. Joubert

1 Q. I want to get to the concept of function, I think you
2 indicated earlier that function is a -- one of the best
3 reliability or best tools to try to assess a person's
4 response to these heavy narcotic drugs, is that correct?

02:04:24

5 A. Yes, sir.

6 Q. And that's what I was -- trying to get to on the
7 question about employment. If a person has been
8 unemployed for a long time since they had a tragic
9 automobile accident or a tragic jar injury years ago, is
10 that something that a good pain management doctor should
11 look into further and determine whether that could be a
12 risk aberrant of addiction?

02:04:40

13 A. Well, you want to determine what's driving that
14 disability perception and what you can do to restore
15 function to a much more normal level.

02:04:54

16 Q. What's driving the disability?

17 A. Yes, sir.

18 Q. And also you mentioned, I think earlier, the
19 component of the -- well, I guess you'd have earlier
20 today, the psychosocial ability, did you mention about a
21 person's assessment of themselves, how they describe pain
22 and their living conditions, is that something that a pain
23 management doctor should be concerned about?

02:05:18

24 A. Yes. You want to assess their physical and
25 psychosocial functioning, how long can they sit, how long

02:05:39

Direct-Owen/By Mr. Joubert

02:05:58

1 can they walk, how long can they stand, are they
2 participating in pleasurable activities with family? Do
3 they have any hobbies? You want to look at all their
4 physical and psychosocial function and what their baseline
5 is and what their functioning is at this point.

6 **Q.** What is chronic pain?

7 **A.** Chronic pain is pain that persists after the tissue's
8 healed, generally considered three months. So there's no
9 longer an injury creating the pain.

02:06:17

10 **Q.** And can you explain to the jury how it would happen
11 that if a injury has healed, after three months if a
12 person is still having pain, what would be the function of
13 narcotic drugs, if any, or what would be the effect of
14 them?

02:06:35

15 **A.** Well, what you're hoping to do with narcotics, if you
16 have to use it as a treatment, is to restore the person's
17 function and quality of life so that they can have a full
18 and rich life.

02:06:56

19 **Q.** Now, we're not saying that in each case if a person
20 is still having pain after three months, that they should
21 not need the drugs, are we?

22 **A.** No, sir. There's a lot of other treatments you do as
23 first line treatment. That's a high risk, nonevidenced
24 base treatment of last resort.

02:07:13

25 **Q.** That is prescription of the narcotic drugs?

Direct-Owen/By Mr. Joubert

1 **A.** Yes, sir.

2 **Q.** Is the last treatment of resort. What about cancer
3 pain, tell the jury about cancer pain.

02:07:28

4 **A.** Well, cancer pain is pain that's caused by invasion
5 of the cancer into your body. So in that situation,
6 opioids would be a first line treatment.

7 **Q.** And in your experience, are they often first line
8 treatment in cancer patients?

9 **A.** When the pain is severe enough.

02:07:46

10 **Q.** Okay. What about chronic pain that is noncancer, is
11 that a -- is that something that a doctor should be
12 concerned about?

02:08:04

13 **A.** Well, certainly you want to help people with chronic
14 pain that's not cancer related, but you have to approach
15 it different than you would a cancer pain patient.

16 **Q.** All right. And with regard to chronic pain, tell the
17 jury a little about these psychosocial modalities or
18 psychosocial issues that you mentioned just briefly ago
19 with regard to chronic pain.

02:08:26

20 **A.** So the most common maladaptive coping mechanisms in
21 the chronic pain population basically divide into about
22 four categories. Fear avoidance, which I'm afraid of
23 hurting myself, so I'm going to stop moving, which leads
24 to a lot of muscle degeneration, and then

02:08:47

25 it's catastrophizing, which is doing the chicken little

Direct-Owen/By Mr. Joubert

02:09:13

1 dance, the sky is falling, the sky is falling, so
2 ruminating thoughts, a lot of dramatization about their
3 situation which may not be realistic, sense of injustice
4 and injustice covers things like entitlement and
5 entitlement and -- I'm blocking -- I'll come back to that
6 one and the last one is disability conviction. So on the
7 injustice it's entitlement and victimization.

02:09:33

8 So, you know, I'm entitled to be pain free
9 and I'm a victim because I'm not pain free. And although
10 certainly we can understand those emotions as a human,
11 they're just not productive and we have to teach them ways
12 of thinking about their problem in a different way. And
13 that's all based on a foundation called cognitive
14 distortion. And that's what a psychologist does is come
15 in, recognize these thought processes which are not
16 helpful, and trains the person to think differently, which
17 can be very helpful.

02:09:48

02:10:06

18 Q. Tell the jury a little about perceived pain,
19 cognitive functioning that you just talked about, and how
20 that may or may not be related to a disability.

21 A. Well, these maladaptive coping mechanisms can --

22 Q. I'm sorry. Say that again.

23 A. Maladaptive coping mechanisms can magnify your
24 perception of pain and disability. For example,

02:10:24

25 depression can take your motivation away to do exercise.

Direct-Owen/By Mr. Joubert

02:10:44

1 Anxiety will tighten your muscles up and if you have
2 muscle spasms that's going to make your pain worse. So
3 it's a very complex interaction, but it all contributes
4 more to the concept of suffering than it necessarily does
5 to the physical pain component.

02:11:02

6 **Q.** But as regard to a patient who may be disabled, that
7 would be cause for a doctor to look deeper as to what was
8 a true motivation?

9 **A.** Yes, sir. Especially when the pathology is not
10 severe enough to predict their perceived disability.

11 **Q.** In reviewing the files of Dr. Evans, did you find
12 evidence that did not support a pathology that was
13 reported by the patient?

02:11:20

14 **A.** I found evidence of mild to moderate pathology, which
15 was nonspecific and would not predict the level of
16 perceived disability.

17 **Q.** Would it be fair to say that that mild to moderate
18 pathology would not support the level of prescription
19 narcotics that Dr. Evans was prescribing?

02:11:40

20 **A.** I think it is certainly a risk factor to consider
21 opioids in that group of people who have a higher risk of
22 unstable behavioral issues that might be -- they may use
23 those drugs to chemically cope or to self medicate with
24 those controlled substances.

02:11:58

25 **Q.** Is there an incident of suicides among opioid

Direct-Owen/By Mr. Joubert

1 abusers?

2 **A.** There is. The chronic pain population has three
3 times the normal population incident of suicide, but when
4 you separate the people with pain and no psychological
02:12:19 5 comorbidities from the people with pain and psychological
6 comorbidities, it's the people with the unstable
7 psychological comorbidities who commit suicide.

8 So pain of itself is not a risk factor for
9 suicide if the unrecognized mental health disorders that's
02:12:36 10 driving the suicide problem.

11 **Q.** Is that significant in assessing cases of overdose
12 deaths? Well, let me ask a different way.

13 What you just said about patients who may
14 engage in -- well, suicide or action that would lead to
02:12:56 15 that, is that the same as the patient who may accidentally
16 overdose?

17 **MS. BOLEN:** Your Honor. I object to the
18 relevance of this line of questioning.

19 **THE COURT:** Let's approach just a second,
02:13:08 20 please.

21 **(The following was held at sidebar)**

22 **THE COURT:** Where are you going?

23 **MR. JOUBERT:** Just about to wrap up, Your
24 Honor.

02:13:30 25 **THE COURT:** No, with the suicide because I

Direct-Owen/By Mr. Joubert

1 thought you had explained that you would not go to this --
2 I think there was some hint that one or more people taking
3 medication have died.

4 MS. BOLEN: That was no connection back to
02:13:46 5 March 11th.

6 THE COURT: I know we dealt with that, that's
7 what I'm saying we dealt with that. I'm just trying to
8 make sure we're not opening that up without recognizing
9 that. Unless he takes the witness stand, that ain't coming
02:13:57 10 in or won't be questioned about. So let's deal -- let's
11 leave the suicide part alone and move on to wherever you
12 are.

13 MR. JOUBERT: Yes, sir.

14 THE COURT: You should be finishing up.

02:14:11 15 MR. JOUBERT: Pretty close. Thank you, Your
16 Honor.

17 **(The following was held in the presence of the jury)**

18 THE COURT: Hold on just one second, counsel.
19 All right. Go ahead and proceed.

02:14:30 20 BY MR. JOUBERT:

21 Q. All right, Dr. Evans. I just have one or two more
22 areas to talk to you about briefly, and those would be --
23 we've talked about nontherapeutic prescribing. I know I
24 asked you some questions, but I want to be clear that
02:14:59 25 we -- did I ask you about the risk factors associated with

Direct-Owen/By Mr. Joubert

1 aberrant drug behavior?

2 **A.** Yes, sir.

3 **Q.** Did I ask -- we talked about that already?

4 **A.** Yes, we did.

02:15:09

5 **Q.** What about outcome benchmarks, if the pain goes up
6 and the function goes down, I think you've already told
7 the jury, then what does that suggest to the doctor?

8 **A.** It's that you're not achieving a therapeutic benefit
9 or something new is happening and you need to assess

02:15:33

10 what's changed physically or psychologically.

11 **Q.** We talked a little about urine drug testing. And I
12 think you've already told the jury -- did you find any
13 indication -- well, I'm sorry. I remember now. You only
14 found one file where there was a request for a drug test,
15 a urine drug test?

02:15:54

16 **A.** Yes, sir.

17 **Q.** Now, before we get to the conclusion, I just want to
18 ask you if in making your assessment of the files you
19 reviewed from Dr. Evans' office, did you pay close
20 attention to the pain management section of the Texas
21 Administrative Code? I think it's Chapter 170.

02:16:19

22 **A.** Yes, sir.

23 **Q.** Is that the current standard and was it back in 2011
24 and '12?

02:16:32

25 **A.** Yes, sir.

Direct-Owen/By Mr. Joubert

1 MR. JOUBERT: One second, Your Honor.

2 THE COURT: All right.

3 BY MR. JOUBERT:

02:17:03

4 Q. In your review of the files of Dr. Evans, were there
5 at least two or three files -- charts that you found that
6 the patient appeared to their overall health would
7 deteriorate after they saw Dr. Evans for a while?

8 A. Yes, sir.

9 Q. Do you remember the names of those patients?

02:17:14

10 A. I do not.

11 Q. And with regard to -- what are you able to tell the
12 jury about the continued use of opioids and narcotic
13 drugs, with regard to the declining health of a patient
14 who consistently get these prescriptions?

02:17:36

15 A. Well, they're nontherapeutic in nature.

16 Q. And if they're nontherapeutic, then the prescriptions
17 are then outside the course of professional practice --
18 medical practice?

02:17:51

19 A. If they're nontherapeutic, you don't have medical
20 necessity to use them. If you don't have medical
21 necessity, then they're not for legitimate medical
22 purpose.

02:18:09

23 Q. Did you find a trend among the files that you
24 reviewed, the charts you reviewed, that the opioids
25 prescribed were in very high doses?

Direct-Owen/By Mr. Joubert

1 **A.** Yes, sir.

2 **Q.** And the dosage units, does it -- you're not saying
3 necessarily that just because there were -- a patient got
4 210 dosages, dosage units of oxycodone, 30 milligrams,
02:18:32 5 that that was necessarily in itself either dangerous or
6 unreasonable, but you did see a trend throughout the cases
7 you reviewed, is that correct?

8 **A.** Yes, sir. The only concern about the higher dose is
9 the risk of an accidental overdose increases the higher
02:18:49 10 the dose, but the more important thing is there wasn't a
11 clear therapeutic benefit.

12 **Q.** And with regard to documentation in the files, what
13 did you -- if you have an opinion, what did you observe
14 with regard to the documentation by Dr. Evans and his
02:19:11 15 staff?

16 **A.** It was very sparse and had partially legible and
17 eligible comments in the documentation.

18 **Q.** What is the significance of the documentation being
19 legible? Why is it important?

02:19:29 20 **A.** The purpose of a medical record is for continuity of
21 care, not only from visit to visit with the same
22 physician, but for a consultant to review the records and
23 understand what's going on, or a future physician who
24 inherits the records down the road, needs to be able to
02:19:48 25 read the document and understand what treatment had been

Direct-Owen/By Mr. Joubert

1 ongoing and how they benefited or did not benefit
2 somebody.

02:20:15

3 **Q.** With regard to the -- you saw the diagnostic tools of
4 the medical notes made by the staff members of Dr. Evans
5 with regard to stretching. Can you tell the jury if you
6 noticed a pattern there and what significance, if any,
7 those stretching exercise sheets would have?

02:20:32

8 **A.** Well, the first thing about the stretching exercise
9 is the vast majority of them reported severe pain. They
10 had severe pain while on controlled substances on a daily
11 method, further supporting the position I had that the
12 medications were nontherapeutic. The second point is
13 stretching alone is not a adequate alternative treatment,
14 such as overall exercise program, and it just doesn't
15 provide any really realistic probability that it was going
16 to produce a clinically and meaningful improvement in
17 their condition.

02:20:57

18 **Q.** Did you make an observation that the majority of the
19 patient files that you reviewed, if not all of them, the
20 patients that traveled for an unusually long distances to
21 obtain controlled substances?

02:21:15

22 **A.** Yes, sir.

23 **Q.** Do you have an opinion about that?

02:21:29

24 **A.** Yes. You would not expect an average clinic to get
25 customers from hundreds of miles away to come to you.

Direct-Owen/By Mr. Joubert

1 Q. I notice you use the term "customers." Why not
2 "patients"?

3 A. Well, I didn't see any evidence that the practice of
4 medicine was going on. It looked more like these were
5 customers.

02:21:47

6 Q. So in conclusion, Dr. Owen, did you -- do you have an
7 opinion with regard to the treatment of pain that
8 Dr. Evans was demonstrated and its relative or standard of
9 care of either minimal or low standard of care?

02:22:06

10 A. I do.

11 Q. And in your opinion, did that represent an imminent
12 threat to public health and welfare?

13 A. Yes, sir.

14 Q. Did you find evidence that Dr. Evans in fact did
15 prescribe in good faith?

02:22:19

16 A. There's no evidence he prescribed in good faith.

17 Q. In your assessment of the medical charts you
18 reviewed, did you find evidence that Dr. Evans failed to
19 perform the basic responsibilities of a physician
20 practicing medicine?

02:22:42

21 A. Yes, sir.

22 Q. And by these omissions and act or a lack of acts, did
23 the treatment that Dr. Evans gave with controlled
24 substances, was that outside the scope of professional
25 practice and not for a medical purpose?

02:22:59

Direct-Owen/By Mr. Joubert

02:23:13

1 **A.** Yes, sir. If you're not getting pertinent records,
2 if you're not doing the right kind of history or physical
3 exam or getting consultations, and you're
4 nontherapeutically prescribing and you're not monitoring
5 for urine drug testing, et cetera, as we've discussed
6 about, you're not practicing medicine. And if you're not
7 practicing medicine, you're outside the scope of medicine.
8 And if you're outside the scope of medicine, none of your
9 prescriptions can be for a legitimate medical purpose.

02:23:29

10 **Q.** With regard to your review of the files you saw that
11 many times patients were sending money orders to Dr. Evans
12 in the amount of \$240, are there indications in the file
13 that Dr. Evans essentially had a cash business? Was that
14 a factor that you assessed in your review of his files?

02:23:51

15 **A.** It was -- it's not a standard of care issue, but it
16 is a profile of what we call a pill mill where you're
17 trading drugs for cash.

18 **Q.** Did you say "trading drugs for cash"?

19 **A.** Yes, sir.

02:24:18

20 **Q.** You already told the jury that you found no -- that
21 there was no exhaustive of conservative evidence based
22 treatments and establish for a reliable clinically
23 meaningful therapeutic benefits and, therefore, medical
24 necessity to prescribe controlled substances was not
25 established; is that correct?

02:24:33

Direct-Owen/By Mr. Joubert/Cross By Ms. Bolen

1 **A.** Yes, sir.

2 **Q.** And, therefore, without medical necessity, would that
3 be that -- did you conclude that the prescriptions of
4 controlled substances provided by Dr. Evans were not
5 provided for a legitimate medical purpose?

02:24:44

6 **A.** Yes, sir.

7 **Q.** And, finally, did you conclude that Dr. Evans
8 prescribed controlled substances outside the scope of
9 medical practice and not for legitimate medical purpose?

02:24:58

10 **A.** Yes, sir.

11 MR. JOUBERT: No further questions of
12 Dr. Evans -- I'm sorry -- Dr. Owen at this time, Your
13 Honor.

14 THE COURT: All right.

02:25:11

15 Did you gather all your papers already?

16 Yes, you may proceed on cross-examination.

17 MS. BOLEN: Thank you, Your Honor. One moment.

18 **CROSS-EXAMINATION**

19 BY MS. BOLEN:

02:25:27

20 **Q.** Good afternoon, Dr. Owen. How are you?

21 **A.** Good.

22 **Q.** Who selected the charts that you reviewed in
23 connection with this case?

24 **A.** The -- the government.

02:26:00

25 **Q.** All right. And you didn't read any other charts

Cross-Owen/By Ms. Bolen

1 beyond the ones that you've mentioned in your direct
2 testimony; correct?

3 **A.** No, ma'am. I did see a few other charts Sunday, and
4 I think maybe last Friday.

02:26:16

5 **Q.** Total of how many charts did you look at?

6 **A.** I'm guesstimating another eight or nine, maybe 10.

7 **Q.** All right. Do you remember the names of any of those
8 people?

9 **A.** No, ma'am.

02:26:26

10 **Q.** You didn't get a chance to look at the discharge
11 patient files, did you?

12 **A.** Those were the charts I looked at, yes, ma'am.

13 **Q.** Did you look at the rejected patient charts?

14 **A.** I don't remember that.

02:26:39

15 **Q.** Did you look at the charts post -- excuse me --
16 September of 2012?

17 **A.** I don't remember seeing any.

18 **Q.** Did you look at the charts that spanned a framework
19 of from 2008 to 2013?

02:26:56

20 **A.** Can you say that again?

21 **Q.** Did you look at the charts that spanned a period 2008
22 to 2013?

23 **A.** 2010 to 2012, I think were the most of the dates I
24 looked at.

02:27:10

25 **Q.** Is it fair to say that there's been a lot of changes

Cross-Owen/By Ms. Bolen

1 that took place in the area of pain management post 2013?

2 **A.** The primary change since 2013 was using the
3 prescription monitoring program.

4 **Q.** We'll talk about that in a minute, but let's talk
5 about the other change.

02:27:30

6 Isn't it true, Dr. Owen, that the State of
7 Texas, the Texas Medical Board, changed its rule for pain
8 management and that that change took place in August of
9 2011?

02:27:42

10 **A.** Yes, ma'am.

11 **Q.** And is it fair to say, that that rule change --
12 changed words "should" to "must"?

13 **A.** "Should" and "shall" were substituted with a "must"
14 and "should," I think.

02:27:56

15 **Q.** So before in the period that we're talking about,
16 2008 to 2013, the Texas Medical Board rule relating to
17 pain management dealt with the physician should, the
18 physician may consider, and those types of things;
19 correct?

02:28:10

20 **A.** Yes, ma'am.

21 **Q.** And then afterward, it's changed that a physician
22 must, meaning they're required to do something; correct?

23 **A.** Yes. But "shall" also meant "must."

24 **Q.** I understand that. We'll come back to that as well.

02:28:26

25 So, you understand that we're not in a

Cross-Owen/By Ms. Bolen

1 medical malpractice case; correct?

2 **A.** Yes, ma'am.

3 **Q.** And you understand that we're not in a disability
4 case; right?

02:28:33

5 **A.** Yes, ma'am.

6 **Q.** All right. And you understand that this man over
7 here is in a fight for life? He is here to prove in some
8 ways that he's not a drug dealer. He doesn't have to
9 prove anything to the jury.

02:28:44

10 MR. JOUBERT: Objection, Your Honor.

11 MS. BOLEN: That's what he's here to do.

12 MR. JOUBERT: Objection. Improper question.

13 THE COURT: I'm going to sustain it.

14 BY MS. BOLEN:

02:28:52

15 **Q.** You never found a situation in your review of the
16 charts where Dr. Evans -- where Dr. Evans prescribed when
17 there wasn't a complaint of pain, did you?

18 **A.** Correct.

19 **Q.** And you never found a situation where Dr. Evans met
20 with somebody outside the practice and just gave them a
21 prescription without having a medical chart on them, did
22 you?

02:29:08

23 **A.** Correct.

24 **Q.** And you did not find any evidence of Dr. Evans

02:29:21

25 trading prescriptions for sex or for trading prescriptions

Cross-Owen/By Ms. Bolen

1 for work around the house or anything like that, did you?

2 **A.** Yes, ma'am.

3 **Q.** In fact, have you ever been to Dr. Evans' practice?

4 **A.** No, ma'am.

02:29:33

5 **Q.** Did you ever -- you weren't around when those
6 patients came to see him, were you?

7 **A.** Correct.

8 **Q.** And, in fact, you know very well, don't you,
9 Dr. Owen, that physicians sometimes get fooled?

02:29:45

10 **A.** Yes.

11 **Q.** You're currently practicing? Yes or no?

12 **A.** No, ma'am.

13 **Q.** When did you give up practicing?

14 **A.** December 2011.

02:29:51

15 **Q.** And that's also around the time you gave up your X
16 registration?

17 **A.** No. I treated opioid addiction for another year
18 before I stopped.

19 **Q.** All right. And so, that would be about 2012;
20 correct?

02:30:03

21 **A.** Yes. It could be into 2013. It's in that area.

22 **Q.** Were you aware that Dr. Evans had a Suboxone
23 registration -- an X registration from DEA?

24 **A.** Yes, ma'am.

02:30:15

25 **Q.** Tell the jury what that means?

Cross-Owen/By Ms. Bolen

1 **A.** That means that you've taken a course so that you
2 understand addiction and some of the ways of treating
3 addiction, but limited to the drug Suboxone.

02:30:35

4 **Q.** And that's the drug that's used to treat opioid
5 addiction?

6 **A.** Yes, ma'am.

02:30:44

7 **Q.** And it can be used in a couple of capacities, can't
8 it not, doctor, one for treating pain and one for treating
9 addiction. In other words, different formulations of the
10 drug?

11 **A.** Yes, ma'am.

12 **Q.** Now, you keep using terms like "evidence based
13 medicine, exhausting all conservative treatments, how well
14 a doctor did." Do you recall that testimony?

02:30:55

15 **A.** Yes, ma'am.

16 **Q.** Tell the ladies and gentlemen of the jury what
17 "evidence based medicine" is.

18 **A.** Evidence based medicine is medicine that has been
19 studied using strict criteria and proven to be effective.

02:31:10

20 **Q.** There's not a reference to evidence based medicine in
21 the Texas pain management rule, is there?

22 **A.** No, ma'am.

02:31:24

23 **Q.** And isn't it true, that during the period 2008 to
24 2013, that in pain management, there really wasn't a lot
25 of evidence based medicine on certain issues like how long

Cross-Owen/By Ms. Bolen

1 you could use opioids, or whether there was a ceiling dose
2 to opioids?

02:31:41

3 **A.** There was some evidence that we didn't have good
4 evidence on opioids, and you should be more cautious with
5 it.

6 **Q.** And what you mean by that is that people were taking
7 different positions and they were publishing papers trying
8 to encourage the community to go forward and study these
9 things; correct?

02:31:51

10 **A.** Partially, that's part of it, yes, ma'am.

11 **Q.** And another thing that happened during that period of
12 is the evolution of education for pain management
13 practitioners and primary care practitioners who treat
14 pain. Do you remember that?

02:32:04

15 **A.** Yes, ma'am.

16 **Q.** All right. And that evolution has, in part, involved
17 the Texas Pain Society; right?

18 **A.** Yes, ma'am.

02:32:11

19 **Q.** And the federal government through various agencies;
20 correct?

21 **A.** Yes, ma'am.

22 **Q.** And even the American Medical Association; right?

23 **A.** Yes, ma'am.

24 **Q.** And the CDC ultimately got involved; correct?

02:32:23

25 **A.** Yes, ma'am.

Cross-Owen/By Ms. Bolen

1 Q. But that happened after 2013; right?

2 A. Yes.

3 Q. All right. Now, when you say words like "a
4 significant change in pain," that it requires a
5 significant change in pain for somebody to continue using
6 opioids, that's not in the Texas Medical Board rule, is
7 it?

8 A. No, ma'am.

9 Q. And if you don't like somebody's opinion, then that
10 just might mean you disagree with the way that they've
11 approached the practice of medicine; correct?

12 A. It's possible.

13 Q. All right. Doctors disagree with each other
14 occasionally, don't they?

15 A. Yes.

16 Q. And doctors get hired to give opinions that are based
17 on their look at a set of files now, in today's state of
18 mind, looking backwards; is that correct?

19 A. I think that's a two-part question. Can you ask me
20 again?

21 Q. Sure. When you look at patient charts to give an
22 opinion, you're looking at them with today's mindset;
23 correct?

24 A. No, ma'am.

25 Q. You're looking at them with all of the information

Cross-Owen/By Ms. Bolen

1 that you've studied up-to-date; correct?

2 **A.** I'm applying what we knew in that time period to the
3 standard of care.

02:33:32

4 **Q.** Well, you just told us a little bit ago, that what
5 you knew regarding the standard of care was that the Texas
6 Medical Board didn't require certain things, didn't have
7 certain language in it; is that right?

8 **A.** Yes.

02:33:44

9 **Q.** Like drug testing. Let's go back to that for a
10 second. The Texas Medical Board doesn't require drug
11 testing, does it?

12 **A.** That rule is a documentation guideline, and it didn't
13 require it, but the standard of care does require it.

02:33:57

14 **Q.** The rule, I believe, Dr. Owen, is a minimum standard
15 in the state, and that language is in the rule. Do you
16 recall that?

17 **A.** The new rule or the old rule?

02:34:10

18 **Q.** The one in effect during the time you said you were
19 using the one during the timeframe 2008 to 2013. I'm
20 talking about that rule.

21 **A.** Yes. Although it doesn't require in the rule that
22 you do urine drug tests; the standard of care does.

02:34:23

23 **Q.** But we're talking about a criminal case, and you
24 understand the difference between standard of care
25 language and the issue of whether a doctor has stepped

Cross-Owen/By Ms. Bolen

1 completely outside the bounds of being a doctor and turned
2 into something else?

3 **A.** I do.

4 **Q.** All right. So in the Texas Medical Board rule,
5 during the period of time 2008 to 2013, tell the ladies
6 and gentlemen of the jury whether drug testing was
7 required.

8 **A.** Drug testing was not required by the rule.

9 **Q.** But it is now, isn't it?

10 **A.** Yes.

11 **Q.** And that happened in 2015; correct?

12 **A.** Yes.

13 MR. JOUBERT: We object to any further
14 questions about what happened in 2015 and the change of the
15 law.

16 THE COURT: Overruled.

17 BY MS. BOLEN:

18 **Q.** Did you go through any charts and find evidence of
19 the laboratory that Dr. Evans used for testing?

20 **A.** Testing what?

21 **Q.** Drugs.

22 **A.** No, ma'am.

23 **Q.** You spoke earlier of the fact that Dr. Evans didn't
24 perform any confirmation testing; correct?

25 **A.** Yes, ma'am.

Cross-Owen/By Ms. Bolen

1 Q. Confirmation testing is something that a clinical
2 laboratory does; right?

3 A. Correct.

4 Q. And that testing can be very expensive; correct?

02:35:42

5 A. About \$300, yes.

6 Q. In fact, during the timeframe from 2008 to 2013,
7 isn't it true that those tests cost quite a bit more back
8 then?

9 A. It depended on the vendor.

02:35:53

10 Q. Depending on the laboratory that sold the testing;
11 correct?

12 A. Yes, ma'am.

13 Q. And some of the doctors actually had their own
14 clinical laboratories, very expensive equipment put into
15 their office; right?

02:36:03

16 A. Yes, ma'am.

17 Q. And they made money off of that; right?

18 A. Yes.

19 Q. And you know that Dr. Evans didn't do that; correct?

02:36:08

20 A. Yes.

21 Q. Didn't have a lab in his office?

22 A. Correct.

23 Q. Have you heard a lab AGIS?

24 A. No, ma'am.

02:36:16

25 Q. So you don't know whether or not Dr. Evans used AGIS

Cross-Owen/By Ms. Bolen

1 in his drug testing, do you?

2 **A.** No, ma'am.

3 **Q.** You didn't look at anything more than what the
4 prosecutor gave you; correct?

02:36:26

5 **A.** Yes, ma'am.

6 **Q.** Now, I want to talk about indicia of a bona fide
7 physician patient relationship.

8 When you get a patient in practice, before
9 you establish that relationship with them, you have to set
10 up an appointment; correct?

02:36:51

11 **A.** Yes, ma'am.

12 **Q.** And there might be some paperwork that precedes that
13 appointment; correct?

14 **A.** Yes, ma'am.

02:36:57

15 **Q.** And sometimes that's handled by your staff, in terms
16 of getting the paperwork out; correct?

17 **A.** Yes, ma'am.

18 **Q.** And then from there, the doctor receives the
19 information, there's a chart that's made up; right?

02:37:09

20 **A.** Yes.

21 **Q.** And there's different components of the chart;
22 correct?

23 **A.** Yes.

24 **Q.** There's a component of a face sheet or a coversheet
25 that tracks what's happened to the patient in the

02:37:16

Cross-Owen/By Ms. Bolen

1 practice. Is that true?

2 **A.** It's possible.

3 **Q.** All right. Some practices use it, some practices
4 don't; right?

02:37:25 5 **A.** Yes, ma'am.

6 **Q.** And some practices will use handwriting, and other
7 practices will use electronic medical records; correct?

8 **A.** And dictation, yes, ma'am.

9 **Q.** And some practices even blend it together; correct?

02:37:40 10 **A.** Yes.

11 **Q.** So in the charts you looked at, you surely noticed
12 the electronic medical records that Dr. Evans kept in many
13 of his charts, didn't you?

14 **A.** May have seen one or two that looked like something
02:37:55 15 along that lines, yes.

16 **Q.** But that's in the charts the prosecutor gave you;
17 right?

18 **A.** Yes.

19 **Q.** Were you aware that Dr. Evans also treated Workers'
02:38:02 20 Comp cases?

21 **A.** No.

22 **Q.** Were you aware that he treated motor vehicle accident
23 patients?

24 **A.** Yes.

02:38:11 25 **Q.** All right. And those treatments sometimes involved

Cross-Owen/By Ms. Bolen

1 stuff other than opioids; correct?

2 **A.** I don't know.

3 **Q.** Because you didn't look at the rest of the file, did
4 you?

02:38:19

5 **A.** Correct.

6 **Q.** Do you have any idea how many charts are in the
7 government's possession?

8 **A.** I do not.

02:38:30

9 **Q.** Now, back to the indicia. So we now have a chart set
10 up, patient shows up for an appointment, in doctor's
11 offices they sign in, don't they?

12 **A.** Yes.

13 **Q.** And that's to keep track of the fact that the patient
14 came; correct?

02:38:41

15 **A.** Yes.

16 **Q.** And that sign-in sheet is maintained on an ongoing
17 basis; correct?

18 **A.** Yes.

02:38:50

19 **Q.** And then in different practices, the patient may
20 route directly to the caregiver to the doctor; correct?

21 **A.** Yes.

22 **Q.** Other times they may see a nurse or a nurse
23 practitioner; right?

24 **A.** Yes.

02:38:59

25 **Q.** And doctors' offices take people's blood pressure,

Cross-Owen/By Ms. Bolen

1 don't they?

2 **A.** Yes.

3 **Q.** And they track it from visit to visit in order to
4 make sure that that patient has a healthy blood pressure;
5 correct?

02:39:10

6 **A.** Yes.

7 **Q.** And you would expect a doctor to point out a high
8 blood pressure issue with a patient if they noticed it,
9 even if they were not the primary care physician for that
10 patient?

02:39:21

11 **A.** Yes, ma'am.

12 **Q.** And then you also would have in most doctors' office
13 and even pain management offices, the ability to weigh a
14 patient; correct?

02:39:32

15 **A.** Yes.

16 **Q.** Have a scale, a patient steps on it -- we don't like
17 doing it, but that's what we do; right?

18 **A.** Yes, ma'am.

19 **Q.** And we track it over time; correct?

02:39:39

20 **A.** Yes, ma'am.

21 **Q.** And the loss of weight in connection with pain
22 management is pretty important, isn't it?

23 **A.** Depends on the context.

24 **Q.** Depends on the person, too, doesn't it?

02:39:48

25 **A.** Yes.

Cross-Owen/By Ms. Bolen

1 Q. All right. And so, somebody that is overweight, a
2 little bit like me, if I have a bad back, losing weight
3 might help me strengthen my abdominal muscles and actually
4 strengthen my back in that situation?

02:39:59

5 A. It's possible.

6 Q. All right. And would it be possible for somebody
7 that had a horse fall on them and have their facets kind
8 of twisted sideways, the little spiny things on the back
9 of your spine here, the little wings, aren't those called
10 wings, the facets?

02:40:14

11 A. You could use that term.

12 Q. That can produce pain in an individual; correct?

13 A. It could, yes.

14 Q. And it's hard to really tell unless you see that
15 patient; right?

02:40:25

16 A. Hard to tell what?

17 Q. If a person really has pain?

18 A. Nobody can tell if somebody has pain or doesn't have
19 pain.

02:40:34

20 Q. That's right. You have to take what the patient
21 represents that pain to be; correct?

22 A. With certain caveats.

23 Q. Sure. A 10 for me might be a 2 for you, or vice
24 versa; correct?

02:40:45

25 A. Yes.

Cross-Owen/By Ms. Bolen

1 Q. And by 10 and 2, I'm talking about the rating of the
2 pain; right?

3 A. Yes, ma'am.

02:40:55

4 Q. All right. So, now, let's walk on in on our
5 treatment of this individual. They've come in and they've
6 decided in a situation with Dr. Evans that you realize
7 that he routed patients first to somebody for stretching?

8 A. It appeared that way.

02:41:10

9 Q. All right. Stretching is a good thing for people
10 that have tight muscles that can contribute to the pain
11 that they're having; correct?

12 A. It can be, if it's done correctly.

13 Q. And it's a form of exercise, isn't it, or a warmup
14 for exercise?

02:41:21

15 A. It's a warmup, yes.

16 Q. And stretching can help people develop stronger
17 muscles that can support the structure of their back to
18 help rid themselves of pain, or at least minimize the
19 pain?

02:41:32

20 A. I don't believe stretching builds muscle. It can
21 limber muscles.

22 Q. It can improve the muscle?

23 A. It can give you better range of motion.

24 Q. And improve the muscle; right?

02:41:43

25 A. If the muscle is keeping you from having good range

Cross-Owen/By Ms. Bolen

1 of motion.

02:41:57

2 Q. So if I have a problem in the back of my neck and I
3 can't turn my neck one way or another, if I get some
4 stretching exercises, that may help me actually keep my
5 top of my head up straight and walk better and not having
6 perhaps as much pain in my neck; correct?

7 A. Yes, ma'am.

02:42:13

8 Q. Now, we've walked on, we've got somebody doing the
9 stretching and that person also puts hands on the patient.
10 That's a good thing in pain management; correct?

11 A. Yes, ma'am.

12 Q. You're aware that not all doctors in this country do
13 a physical examination every time they see somebody who is
14 using opioids on a long-term basis; right?

02:42:26

15 A. I would not advise it.

16 Q. I didn't ask whether you advised it. You're aware
17 that there's physicians around this country that don't
18 perform a physical exam every single time they see a
19 patient?

02:42:39

20 A. Not the ones who are practicing medicine.

21 Q. All right. State of Texas and the Texas Medical
22 Board rule doesn't require a physical examination every
23 time, does it?

24 A. No, it doesn't.

02:42:50

25 Q. And that is the minimum standard in this state, is it

Cross-Owen/By Ms. Bolen

1 not, sir?

2 **A.** The Rule 170 is not a standard of care document.

3 It's a documentation guideline.

02:43:06

4 **Q.** So the use of the phrase "minimum standard" in the
5 Texas Medical Board rule is irrelevant in your mind?

6 **A.** It refers to a minimum documentation standard.

02:43:24

7 **Q.** We'll come back to that. So we've got a person now
8 who has seen somebody for stretching, and now they're
9 going to go have somebody else lay their hands on them and
10 have muscle issues addressed. That's a good thing, is it
11 not?

12 **A.** Yes.

02:43:32

13 **Q.** And then that person may ultimately have to go back
14 out in the waiting room and then ultimately get to see the
15 doctor; right?

16 **A.** Possibly.

17 **Q.** You don't know whether Dr. Evans performed a physical
18 examination because you weren't there in the room with
19 him, were you?

02:43:39

20 **A.** Correct.

21 **Q.** But the people that were there were the patient;
22 right?

23 **A.** Yes.

24 **Q.** Staff members; right?

02:43:46

25 **A.** Possibly.

Cross-Owen/By Ms. Bolen

1 Q. And if they were to say that there was an examination
2 performed, that's not something you would doubt, is it?

3 A. It depends.

02:44:04

4 Q. The doctor under Texas Rule 170 has to take a
5 history, or do a patient evaluation; is that right?

6 A. Yes.

7 Q. All right. And that evaluation has certain
8 components to it. They have to document a problem focused
9 exam; correct?

02:44:16

10 A. Correct.

11 Q. And in some cases, patients that come to see doctors
12 who are going to treat them with an opioid for pain
13 management, it had exams by doctors; correct?

14 A. It's possible.

02:44:27

15 Q. You certainly saw the information in Derek Guitreau's
16 file about the prior treatment of another doctor, didn't
17 you?

18 A. Yes, ma'am.

02:44:37

19 Q. And, in fact, there were notes in the chart from that
20 other doctor; correct?

21 A. One or two notes, I think.

22 Q. And, in fact, those notes actually acknowledged that
23 Dr. Evans was treating this patient for medication
24 management, while the doctor, I believe his name was

02:44:52

25 Isaza -- I-S-A-Z-A -- he was the orthopedic involved in

Cross-Owen/By Ms. Bolen

1 trying to help with injections and other things to help
2 treat the pain. Do you remember that?

3 **A.** I don't remember all the details, but it's something
4 along that, yes, ma'am.

02:45:07

5 **Q.** And when that happens between doctors, that's
6 something called coordination of care; correct?

7 **A.** Yes.

8 **Q.** That's a good thing, isn't it?

9 **A.** Yes.

02:45:14

10 **Q.** And you remember that there was nothing in there that
11 Dr. Isaza said that commented negatively on the opioids
12 that were being prescribed; right?

13 **A.** Correct.

02:45:27

14 **Q.** And, in fact, Dr. Isaza seemed to be aware of all the
15 medication that Mr. Guitreau was receiving from Dr. Evans
16 and even had that written down in the chart; correct?

17 **A.** I believe so, yes.

18 **Q.** And that's a good thing, isn't it?

19 **A.** Yes.

02:45:37

20 **Q.** That's what doctors do; right?

21 **A.** Yes.

22 **Q.** Now, the patient evaluation involves nature and
23 intensity of the pain; right?

24 **A.** Yes.

02:45:47

25 **Q.** The nature of the pain is expressed by the patient to

Cross-Owen/By Ms. Bolen

1 the doctor; correct?

2 **A.** Yes.

3 **Q.** I have burning pain, that's a nature of pain; right?

4 **A.** Yes.

02:45:55

5 **Q.** I have tingling in my foot?

6 **A.** Yes.

7 **Q.** I have cramping in my back and can't straighten up
8 and even when I do, it pinches something and almost knocks
9 me to my knees; right? That's a nature of pain?

02:46:08

10 **A.** Yes.

11 **Q.** And the intensity is the scale, right? The 1 to 10,
12 or however it's scored in a particular practice?

13 **A.** Yes, ma'am.

02:46:18

14 **Q.** And there have been a lot of controversy about the
15 use of those pain scales, hasn't there, at least back in
16 the time period we're talking about?

17 **A.** Yes.

18 **Q.** Whether we use smiley faces or numbers or describe
19 what the numbers mean, people take different approaches to
02:46:29 20 that; correct?

21 **A.** Yes.

22 **Q.** And there's nothing wrong with that, is there?

23 **A.** No.

02:46:39

24 **Q.** In fact, when you looked at the records, you surely
25 noticed that Dr. Evans was asking his patients what was

Cross-Owen/By Ms. Bolen

1 their pain right now. Do you remember that?

2 **A.** Yes.

3 **Q.** And then what was your pain at the worst, do you
4 remember that?

02:46:47

5 **A.** Yes.

6 **Q.** And do you remember the middle number, what was your
7 pain at the best; right?

8 **A.** Yes.

9 **Q.** And those numbers varied over a visit; correct?

02:46:55

10 **A.** Yes.

11 **Q.** And, in fact, there were examples in the charts that
12 you reviewed where the patient came in and said, "hey, I'm
13 back at work. The pain has increased." And you might see
14 that reflected in the numbers, but that's nothing bad, is
15 it?

02:47:08

16 **A.** It depends on the documentation to explain it.

17 **Q.** Well, with the numbers are recorded in the chart,
18 surely that's part of what the Texas Medical Board
19 requires; right?

02:47:18

20 **A.** That's just a small part of what you should be
21 documenting.

22 **Q.** But it is one part; correct?

23 **A.** Yes.

24 **Q.** And, you know, you keep coming back to what you
25 should be documenting. There's actually a separate

02:47:27

Cross-Owen/By Ms. Bolen

1 section in the Texas Medical Board rule that talks about
2 medical records; right?

3 **A.** Yes.

4 **Q.** And in the front part of the Texas Medical Board
5 rule, it actually says that these are the things that the
6 Texas Medical Board wants doctors to do as a minimum
7 standard in the state; correct?

8 **A.** Yes.

9 **Q.** It doesn't say "minimum standard of documentation,"
10 does it?

11 **A.** I don't remember the rule.

12 **Q.** So the doctor also is supposed to ask about current
13 and past treatments for pain; correct?

14 **A.** Yes.

15 **Q.** And you saw that reflected in the chart by the fact
16 that the patients were asked to provide their prior
17 doctors; correct?

18 **A.** I saw that part.

19 **Q.** Did you also see the part where the patients were
20 asked to talk about the prior medications that they
21 received?

22 **A.** No, I did see a copy of prior medications, like a
23 pharmacy record.

24 **Q.** So you didn't see the sheet in the part where the
25 patient wrote down that these are the medications I've had

Cross-Owen/By Ms. Bolen

1 in the past?

2 **A.** It wasn't real clear if those were the current meds
3 or the meds that were going to be part of the treatment
4 plan, but I did see that written down, yes.

02:48:41

5 **Q.** Would you agree with me that at least in the
6 paperwork in Dr. Evans' chart organization there was a
7 piece of paper called history of injury, do you remember
8 that piece of paper?

02:48:57

9 **A.** I think I remember that being on the initial
10 evaluation form.

11 **Q.** But you don't really remember, do you?

12 **A.** I think that's where I saw it.

13 **Q.** A history of injuries is something that a patient
14 would fill out; correct?

02:49:05

15 **A.** Yes.

16 **Q.** All right. And so, if a patient is asked in the
17 history of injury what medications they've taken and
18 whether they worked, then they would write that down;
19 right?

02:49:16

20 **A.** Yes.

21 **Q.** So that's part of gathering that information that the
22 State Medical Board requires; right?

23 **A.** It's a small part of it, yes.

24 **Q.** But that's what doctors do; correct?

02:49:24

25 **A.** Yes.

Cross-Owen/By Ms. Bolen

1 Q. They're also supposed to look at underlying or
2 coexisting diseases and conditions; right?

3 A. Yes.

02:49:34

4 Q. And some doctors that do medication management may
5 not be the doctor that actually treats that patient for
6 that underlying disease; correct?

7 A. It's possible.

02:49:47

8 Q. In other words, some patients will have a primary
9 care physician that's managing maybe their anxiety or
10 managing, you know, other issues like blood clotting
11 disorder, things like that; right?

12 A. Yes, ma'am.

13 Q. And a patient may have a rheumatologist to manage the
14 Lupus or autoimmune disorders; correct?

02:50:00

15 A. Yes.

16 Q. Do you realize that the State Medical Board requires
17 the doctor to evaluate the effect of pain on physical and
18 psychological function; right?

02:50:16

19 A. The effect of pain on physical and psychosocial
20 function, yes.

21 Q. It says psychological in the older version of 170,
22 Dr. Owen. Do you remember that?

23 A. It may, yes.

02:50:30

24 Q. So when a doctor does that, they do it in terms of
25 asking the patient about the baseline that you mentioned

Cross-Owen/By Ms. Bolen

1 earlier; correct? Baseline for family relationships;
2 right?

3 **A.** Yes, ma'am.

4 **Q.** Baseline for social interactions, whether you get
5 together for a barbecue or you go to church; right?

6 **A.** Yes, ma'am.

7 **Q.** And baseline for sleep; right?

8 **A.** Yes, ma'am.

9 **Q.** Baseline for mood?

10 **A.** Yes.

11 **Q.** And baseline for physical function; correct?

12 **A.** Yes.

13 **Q.** And if a doctor assesses those at the beginning or in
14 the early part of the relationship with the physician, or
15 with the patient -- excuse me -- then that is in -- at
16 least a good-faith effort to comply with the Texas Medical
17 Board standard; right?

18 **A.** If it's adequately performed, yes, ma'am.

19 **Q.** Well, again, we're going back to these words,
20 "adequately" and "proper" and things like that. The
21 language is not that way in the Texas Medical Board rule,
22 is it?

23 **A.** It's not a standard of care rule. It's a
24 documentation guideline.

25 **Q.** We're not in a standard of care negligence case, are

Cross-Owen/By Ms. Bolen

1 we, Dr. Owen?

2 **A.** No, ma'am.

3 **Q.** And the real nuts and bolts of the prescribing of an
4 opioid, according to the Texas Medical Board is that
5 there's a presence of one or more generally recognized
6 indications for the use of an opioid; correct?

7 **A.** Yes.

8 **Q.** And that can be, you know, from the FDA label for the
9 drug. Do you know what that is?

10 **A.** I'm sorry. Can you say that again?

11 **Q.** Do you need some water?

12 **A.** I'm fine.

13 **Q.** Okay. One or more generally recognized indications
14 for the use of an opioid or a controlled substance, or any
15 medication for that matter, comes in part from the FDA
16 label for the drug; right?

17 **A.** Yes, ma'am.

18 **Q.** And the FDA is the Food and Drug Administration;
19 correct?

20 **A.** Yes, ma'am.

21 **Q.** That's a federal agency that approves drugs for use
22 in the public that doctors can write a prescription or
23 somehow get it out to patients; right?

24 **A.** Yes, ma'am.

25 **Q.** And in this situation, with opioids, in fact, the FDA

Cross-Owen/By Ms. Bolen

1 changed some of the labels during the period 2012 to 2013,
2 didn't they?

3 **A.** Can you give me some specifics? I'm not recalling.

02:52:40

4 **Q.** Have you not tracked what has happened with opioids
5 in the changing of the labels through the period of time?

6 **A.** I'm not catching onto what you're implying.

7 **Q.** You stopped prescribing and doing work like that in
8 2012, didn't you?

9 **A.** Yes, ma'am.

02:52:51

10 **Q.** So one or more recognized medical indications for the
11 use of a controlled substance can be if somebody has a
12 pain that's caused by a crushing injury to their spine and
13 they've had hardware implanted into their body, and the
14 patient comes in and says I have pain or walking with a
15 cane, a doctor would at least have a recognized indication
16 for the use of the opioid; right?

02:53:11

17 **A.** If you've exhausted the other treatment options.

18 **Q.** And by "exhausted," again, you're going back to a
19 word that is not in the Texas Medical Board rule; right?

02:53:26

20 **A.** Correct.

21 **Q.** And the Texas Medical Board rule, just to go even
22 further, Dr. Owen, is about being a doctor, is it not?

23 **A.** Yes.

02:53:36

24 **Q.** It's the minimum standard for being a doctor;
25 correct?

Cross-Owen/By Ms. Bolen

1 A. It's the minimum documentation.

2 Q. Now, the medical board rule also talks about
3 treatment plan; right?

4 A. Yes, ma'am.

02:53:46

5 Q. And you've testified not only here, but in other
6 situations that function is the most important goal of a
7 treatment plan; right?

8 A. Yes, ma'am.

02:53:59

9 Q. And we want to get people back on their feet so that
10 they don't have to walk with canes anymore, so they don't
11 have to rely on it as much or whatever is best for them?

12 A. Yes, ma'am.

13 Q. And that requires patient input, does it not?

14 A. Yes.

02:54:11

15 Q. And the patient has responsibilities in these cases,
16 do they not?

17 A. Yes.

18 Q. And the treatment goals are definitely to improve
19 function and that comes kind of slowly with some people
20 with chronic pain; right?

02:54:22

21 A. It can.

22 Q. It doesn't happen on the first visit, does it,
23 Dr. Owen?

24 A. Typically not.

02:54:28

25 Q. In fact, it can take many months of visits to figure

Cross-Owen/By Ms. Bolen

1 out what's going on with the patient; correct?

2 **A.** It can take some time, yes, ma'am.

3 **Q.** And by "some time," it can take many months; right?

4 **A.** Depends on the situation.

02:54:42

5 **Q.** Now, another one of the goals is improving quality of
6 life; right?

7 **A.** Yes.

8 **Q.** Do you remember the patient Audie Decoteau and what
9 he said to Dr. Evans when he came in for the first visit?

02:54:56

10 **A.** I do not.

11 **Q.** He's disgusted with the quality of his life and he
12 wants it back. That's a fair statement from a patient, is
13 it not?

14 **A.** Yes.

02:55:07

15 **Q.** And when we talk about reducing pain levels, we're
16 not talking about something that has to go from 10 to 0,
17 or 10 to 1, are we?

18 **A.** No, ma'am.

19 **Q.** In fact, it can go from 10 to 6 and still be
20 meaningful; correct?

02:55:21

21 **A.** Yes, ma'am.

22 **Q.** And it, again, is individual to that person; right?

23 **A.** Yes.

24 **Q.** And so, if somebody goes back to work and has worked
25 for the first time in three years, then that's a good

02:55:31

Cross-Owen/By Ms. Bolen

1 thing, is it not?

2 **A.** Yes.

3 **Q.** And you saw that in the files that you reviewed,
4 didn't you?

02:55:38

5 **A.** I don't remember that.

6 **Q.** Now, the treatment plan also requires that dosage and
7 frequency of any drugs prescribed be reported; is that
8 right?

9 **A.** Yes, ma'am.

02:55:54

10 **Q.** And you saw that on the face sheet of Dr. Evans'
11 charts, did you not?

12 **A.** Yes. They're supposed to be in the treatment plan.

13 **Q.** You didn't see all of the typewritten notes, did you?

14 **A.** I only saw what I was given.

02:56:08

15 **Q.** It's also supposed to say whether or not other
16 treatments are planned; correct?

17 **A.** Yes.

18 **Q.** And you've talked about a lot about these other
19 treatments, you know. There might be a surgery option,
20 there might be an injection option; correct?

02:56:20

21 **A.** Yes, ma'am.

22 **Q.** Those things are expensive, aren't they?

23 **A.** It can be.

24 **Q.** And you realize that Dr. Evans' patient population,
25 many of them didn't have insurance; right?

02:56:29

Cross-Owen/By Ms. Bolen

1 **A.** Yes.

2 **Q.** Some of them did, and some of them didn't?

3 **A.** Could be.

4 **Q.** All right. You certainly realize that Dr. Evans took
02:56:40 5 insurance, didn't you?

6 **A.** I only can opine about what I saw.

7 **Q.** You know some doctors do opt out of insurance, do
8 they not, Dr. Owen?

9 **A.** I don't know of any that have.

02:56:54 10 **Q.** You, yourself, didn't participate in the Medicare
11 program at one point in time; is that correct?

12 **A.** That's true.

13 **Q.** And you yourself didn't participate in the Medicaid
14 program at one point in time?

02:57:07 15 **A.** Let me backup. Did you say I didn't participate in
16 Medicare was the question before that? Because I may have
17 misanswered.

18 **Q.** Medicare I said first and Medicaid second.

02:57:19 19 **A.** I always participated in Medicare. I opted out of
20 Medicaid.

21 **Q.** And you opted out of Medicaid in part because of the
22 complexities of reimbursement associated with it; right?

23 **A.** No, ma'am.

24 **Q.** Why did you opt out?

02:57:28 25 **A.** Medicaid was -- had a high risk of high population of

Cross-Owen/By Ms. Bolen

1 addiction and mental health disorders, and it just was
2 extra complicated treatments that I didn't care to
3 continue.

02:57:51

4 **Q.** I thought you were treating addiction between 2011
5 and 2012?

6 **A.** Yes, but I opted out of Medicaid in '98 or '9.

7 **Q.** All right. And you just evolved into that same
8 patient population that you opted out of; right?

9 **A.** Eventually, yes.

02:58:07

10 **Q.** And you realize that some people don't have the high
11 end Cadillac health plans that cover some of the
12 procedures that pain management specialists do; right?

13 **A.** Yes.

02:58:20

14 **Q.** In fact, implanting pumps that deliver medication to
15 the spine, that's expensive, is it not?

16 **A.** Yes.

17 **Q.** And implanting stimulators that stimulate nerves and
18 help the patient with the pain problem that way, those are
19 expensive, are they not?

02:58:28

20 **A.** Yes.

21 **Q.** And even injections, some people just don't want to
22 have needles put in their body anymore; right?

23 **A.** Yes.

02:58:41

24 **Q.** And those needles can come quite frequently in an
25 interventional pain practice, is that correct?

Cross-Owen/By Ms. Bolen

1 **A.** Not if they're really responding to the injections.
2 They, you know, don't need to have frequent repeated
3 injections.

02:58:52

4 **Q.** Would it be fair to say that the health insurance
5 allows right to about six of -- let's say SI joint
6 injections, the sacroiliac joint injection?

7 **A.** Well, I think Blue Cross limits you to two per year.

8 **Q.** All right. Was that during the timeframe, or did
9 that develop after 2012?

02:59:11

10 **A.** That was 2008 or '9.

11 **Q.** All right. Now, I want to go back to this drug
12 testing issue for just a minute. I recall that you
13 testified about the finding of THC in a patient's urine.
14 Do you remember that testimony?

02:59:31

15 **A.** Yes.

16 **Q.** Isn't it fair to say, Dr. Owen, that there is no real
17 agreement in the world of pain medicine about what a
18 doctor should do regarding THC?

19 **A.** There is in Texas.

02:59:44

20 **Q.** And that agreement comes from what entity?

21 **A.** It's one of the acts of -- I think it's a Texas Pain
22 Act, that if you know or should have known that somebody
23 has a substance use disorder, you can no longer treat them
24 with controlled substances, unless you also get them help
25 with an addictionologist or a psychologist with experience

03:00:05

Cross-Owen/By Ms. Bolen

1 in addiction medicine.

2 Q. Now, that's not what the Texas Pain Society's
3 statement on drug testing says, is it?

03:00:20

4 A. It's possible that there's other opinions, but when
5 you talk to the medical board, they'll tell you, Mary
6 Robinson, the executive director, has said in meetings,
7 that if somebody is using marijuana, you must assume that
8 they have a substance use disorder until proven otherwise.

03:00:36

9 Q. And this is the same medical board that didn't
10 require drug testing until 2015; right?

11 A. Correct.

03:00:54

12 Q. All right. Now, with regard to what you just said in
13 the THC, certainly you're aware that some of the
14 laboratories out there often take THC off of the test
15 panels; right?

16 A. They can if the physician requests it.

17 Q. Right. Or in many cases, some of the companies that
18 sell the little cups that do the testing in the practice,
19 they're not manufactured with those strips either; right?

03:01:07

20 A. I'm not aware of that.

21 Q. You didn't ever use point of care cups in your
22 practice?

23 A. I did for a brief period and they were so inaccurate
24 I abandoned them.

03:01:16

25 Q. Did you go to a lab?

Cross-Owen/By Ms. Bolen

1 **A.** Yes.

2 **Q.** Was it your own lab?

3 **A.** No.

03:01:24

4 **Q.** All right. Now, we have a treatment plan and the
5 next the thing that we talk about is informed consent and
6 treatment agreement. Do you recall that from the Texas
7 Medical Board?

8 **A.** Yes, ma'am.

03:01:32

9 **Q.** You didn't mention that in your direct testimony, did
10 you?

11 **A.** No.

12 **Q.** But you found a patient contract in Dr. Evans'
13 charts; correct?

14 **A.** Yes.

03:01:38

15 **Q.** And you also found a patient medication management
16 agreement; right? Or pain management agreement?

17 **A.** A pain management agreement, yes.

18 **Q.** And those are very similar to what the Texas Pain
19 Society put out for its members to use; right?

03:01:51

20 **A.** Yes.

21 **Q.** Were you aware that Dr. Evans was a member of the
22 Texas Pain Society?

23 **A.** Yes.

03:02:02

24 **Q.** Were you aware that he has tracked what the Texas
25 Pain Society has done over time and implemented changes in

Cross-Owen/By Ms. Bolen

1 his practice, according to what the pain society wanted?

2 **A.** No.

3 **Q.** You didn't look at all the records to know that,
4 though, did you?

03:02:11

5 **A.** I looked at the records I was provided.

6 **Q.** And so, with regard to informed consent, the purpose
7 of that is to provide patients with information about the
8 risks and potential benefits or expected benefits of using
9 opioids; right?

03:02:27

10 **A.** Yes.

11 **Q.** And that was in Dr. Evans' paperwork; correct?

12 **A.** I saw pain management agreement. I don't think I saw
13 informed consent.

03:02:38

14 MS. BOLEN: Your Honor, may I have a moment,
15 please?

16 THE COURT: Yes.

17 MS. BOLEN: May I approach the witness, Your
18 Honor?

03:03:01

19 THE COURT: Why don't you approach counsel
20 first.

21 MS. BOLEN: Sure.

22 THE COURT: Make sure you're on the same page.
23 You have an exhibit number?

03:03:30

24 MS. BOLEN: Yes. Exhibit 103, Defense 103,
25 Your Honor.

Cross-Owen/By Ms. Bolen

1 THE COURT: All right. You may.

2 BY MS. BOLEN:

3 Q. And I'm referring to page -- Bates Stamp 9122.

4 Dr. Owen, this is a page out of one of the medical charts,
03:03:45 5 that I believe you were given to review. Do you recognize
6 that document?

7 A. It's titled "patient contract."

8 Q. All right. Does it have consent elements in it about
9 the risks of using opioids?

03:03:58 10 A. I see in Line 8 it says, "The purpose is to improve
11 quality of life." It says that, "The opioids can cause
12 disorientation, respiratory depression, kidney and 'lover'
13 dysfunction."

14 Q. There's a typo in there; right?

03:05:03 15 A. Yes.

16 Q. People make typos, don't they?

17 A. Yes. I'm aware that alcohol and illegal drugs is
18 contraindicated and can be life threatening.

19 Q. That's a term of informed consent; correct?

03:05:20 20 A. Yes. And I've been made aware the potential danger
21 and detrimental effects of narcotics and tranquilizers
22 used in combination or alone, yes. Okay.

23 Q. So this essentially operates as a informed consent
24 document; correct?

03:05:35 25 A. Yes.

Cross-Owen/By Ms. Bolen

1 Q. But informed consent is a little bit more than that.
2 Obviously, the physician talks to the patient about these
3 things; right?

4 A. Yes.

03:05:42

5 Q. And the patients would be in the best position to
6 know whether that happened as well as the staff; correct?

7 A. Yes.

8 Q. Not you, because you weren't there; right?

9 A. I can only look at what's documented.

03:05:54

10 Q. So we also have that pain management agreement and
11 you certainly remember that; correct?

12 A. Yes.

13 Q. And you remember that one of the provisions used in
14 the State of Texas, and used quite commonly around the
15 country, is that the patient is limited to one pharmacy;
16 correct?

03:06:04

17 A. Yes.

18 Q. That's something that the Texas Pain Society
19 recommends to its members; right?

03:06:19

20 A. Yes.

21 Q. You mentioned about long-acting and short-acting
22 opioids. Do you recall testifying about that general
23 topic?

24 A. I testified about opioids versus opiates, but I don't
25 think we talked about long versus short-acting.

03:06:30

Cross-Owen/By Ms. Bolen

1 Q. All right. Then let's explain it to the jury. A
2 long-acting opioid is something that the patient can take
3 they don't have to take as many doses and it helps work on
4 a long-term around the clock, right -- in layman's terms?

03:06:46

5 A. It provides extended duration therapy.

6 Q. And sometimes that works well for people and
7 sometimes it doesn't work well; correct?

8 A. Yes.

03:06:58

9 Q. And sometimes the doctor has to try changing medicine
10 and other times they may add in another opioid to address
11 if the dose doesn't work, the long-acting medication
12 doesn't work or at the end of the dose; right?

13 A. Yes.

14 Q. And there's nothing unusual about that, is there?

03:07:12

15 A. As long as it's documented about your rationale to do
16 it.

17 Q. Well, again, back to as long as it's documented to
18 your rationale, that language about long-acting and short
19 acting isn't in the Texas Medical Board rule, is it?

03:07:27

20 A. No, ma'am.

21 Q. Now, long-acting, short-acting opioid, one that lasts
22 longer, one that lasts shorter, that's been kind of a
23 subject matter of debate in the pain medicine community;
24 right?

03:07:41

25 A. Yes.

Cross-Owen/By Ms. Bolen

1 Q. And some people go on the conservative side and won't
2 do it; right?

3 A. Won't do what?

4 Q. Won't prescribe both of those medications together?

03:07:52

5 A. There is a -- it's possible, yes.

6 Q. You also stated that part of the problem that you had
7 with Dr. Evans' medical records was that he did not
8 exhaust all conservative evidence based treatments. Do
9 you remember that?

03:08:08

10 A. Yes.

11 Q. That's not something that the Texas Medical Board
12 requires them to do; right?

13 A. No. But the standard of care does.

03:08:20

14 Q. And so, also, so many of these patients that you
15 reviewed, they came in after having other treatments;
16 correct?

17 A. I don't know what treatments they've had. There
18 wasn't adequate records.

03:08:29

19 Q. Well, surely you've read where the patient
20 represented -- some information about what they had;
21 correct?

22 A. There's minimum information, yes.

23 Q. There is some information, is there not, Dr. Owen?

24 A. There was some, yes.

03:08:38

25 Q. There was also MRIs and X-rays in the charts;

Cross-Owen/By Ms. Bolen

1 correct?

2 **A.** Yes.

3 **Q.** And in some cases there were notes from other
4 doctors; right?

03:08:46

5 **A.** Yes.

6 **Q.** And so those notes, like Derek Guitreau explained
7 some of the other treatments that Mr. Guitreau had. Do
8 you recall that?

9 **A.** Yes.

03:08:55

10 **Q.** He had in some injections; right?

11 **A.** Yes.

12 **Q.** He had dyes stuck into his body so that they could
13 look at his discs; right?

14 **A.** Yes.

03:09:06

15 **Q.** Those things are ways of diagnosing a pain condition
16 or a pain generator; right?

17 **A.** Yes.

18 **Q.** And the doctor that receives that information can use
19 it in the treatment of that patient; correct?

03:09:20

20 **A.** Yes.

21 **Q.** Nothing unusual about that; right?

22 **A.** Correct.

23 **Q.** That's what doctors do; right?

24 **A.** Yes.

03:09:34

25 **Q.** Now, you mentioned -- I'm out of order here. Excuse

Cross-Owen/By Ms. Bolen

1 me just one second. The next section that we get to in
2 the Texas Medical Board rules is called periodic review.
3 And in periodic review the medical board says it's at
4 reasonable intervals based on the patient's individual
5 needs; right?

03:09:52

6 **A.** Yes.

7 **Q.** And so, sometimes that can be seeing the patient
8 three months in a row, skip a month and then come back the
9 next month; right?

03:10:01

10 **A.** Yes.

11 **Q.** It could be you see the patient several months in a
12 row and maybe skip two or three months; right?

13 **A.** Yes.

14 **Q.** Now, you're not telling this jury that in each
15 instance of the charts that you reviewed, that you found a
16 pattern of going three months in visits and then three
17 months off, you didn't find that, did you?

03:10:09

18 **A.** Three months on, and three months off?

19 **Q.** Yes.

03:10:20

20 **A.** No, ma'am, I did not.

21 **Q.** You found variations based on the patient; correct?

22 **A.** I found one or two visits close together at the
23 beginning and then three months, I believe, was the most
24 common. There may have been an exception.

03:10:33

25 **Q.** Let's talk about those exceptions. You recall a

Cross-Owen/By Ms. Bolen

1 Calvin McDonald?

2 **A.** I remember the name, yes.

3 **Q.** Visits on 4-11, 5-11, 6-11. Do you recall those?

4 **A.** Yes.

03:10:48

5 **Q.** Visit on 7-11?

6 **A.** Yes.

7 **Q.** Visit on 8-25-11?

8 **A.** Yes.

03:10:57

9 **Q.** And then there were three months off and then another
10 visit; right?

11 **A.** Yes, ma'am.

12 **Q.** And two months after that, off?

13 **A.** Yes.

03:11:04

14 **Q.** And then on and off, on and off, until the end of the
15 time. Do you remember that?

16 **A.** Yes.

17 **Q.** That's a varied pattern that didn't quite fit to what
18 you just testified, did it?

19 **A.** Correct.

03:11:14

20 **Q.** How about Wayne Evans, do you remember that chart?

21 **A.** I remember the page.

22 **Q.** All right. Two months on, visits in 12-10 and 1-11,
23 off a month, on a month, off a month. Do you remember
24 that pattern?

03:11:29

25 **A.** Yes.

Cross-Owen/By Ms. Bolen

03:11:44

1 Q. And, again, on a month, off a month, on a month, off
2 a month, on a month, and then it took from December of
3 2010, until September of 2011, before Mr. Evans ever got
4 to go to a three-month period, and that was only for a
5 short-term. Do you remember that?

6 A. I don't remember the details, but I accept your word
7 on it.

8 Q. So at reasonable intervals, those patterns can
9 represent reasonable intervals; correct?

03:11:56

10 A. Yes.

11 Q. And those things are documented in Dr. Evans' medical
12 charts, are they not?

13 A. Yes.

14 Q. The fact that he encountered the patient?

03:12:05

15 A. Yes.

16 Q. And, in fact, they actually numbered the visits in
17 the top right-hand corner of their revisit or followup
18 form, did they not?

19 A. Yes, ma'am.

03:12:17

20 Q. And you can tell by looking at those records that the
21 staff and/or Dr. Evans actually inquired about new
22 information related to the pain, do you remember that?

23 A. Yes.

03:12:30

24 Q. And that's part of what the Texas Medical Board
25 requires; correct?

Cross-Owen/By Ms. Bolen

1 **A.** A part.

2 **Q.** And you could see notes of any medication adjustment
3 in the chart, could you not?

4 **A.** Only by looking at the prescriptions, I believe.

03:12:43

5 **Q.** So you ignored the face sheet that was in each of the
6 charts?

7 **A.** I don't remember seeing the face sheet. I remember
8 the stretching sheet, but it's possible, yes.

03:12:58

9 **Q.** Do you remember the sheet that tracked the so far and
10 calm, the chronological fashion of it, do you remember
11 that piece of paper?

12 **A.** Yes.

13 **Q.** Do you remember that piece of paper also had the
14 writing in it about the medications prescribed to the
15 patient and the dose?

03:13:07

16 **A.** I don't remember that, but it's possible.

17 **Q.** Now, you also talked about aberrant behaviors and
18 we've already talked about the drug testing. I think you
19 used the language that the physician should look for
20 certain things; right? Do you remember that?

03:13:26

21 **A.** In what context?

22 **Q.** Well, I believe you stated that the physician should
23 look for aberrant behaviors; right?

24 **A.** Yes.

03:13:38

25 **Q.** Those aberrant behaviors can develop right away with

Cross-Owen/By Ms. Bolen

1 some people and over time with others; right?

2 **A.** Yes.

3 **Q.** And sometimes it takes a little bit of navigating to
4 figure out what those aberrant behaviors mean; right?

03:13:52 5 **A.** It could be, yes.

6 **Q.** Because not all aberrant behaviors are really
7 aberrant; correct?

8 **A.** Well, if they're not aberrant, you wouldn't call them
9 aberrant anymore.

03:14:02 10 **Q.** You're right. So, for example, a patient asking for
11 a specific drug, that may or may not be an aberrant
12 pattern of behavior; right?

13 **A.** Correct.

14 **Q.** There's nothing wrong with me coming in to you and
03:14:15 15 say, "Hey, in the past with my doctor, this is the drug
16 that that worked best for me. I'd like to have that
17 again, if you don't mind." I could say that. There's
18 nothing wrong with that?

19 **A.** Correct.

03:14:24 20 **Q.** And the doctor is supposed to take all of the
21 information that he has and make a decision; correct?

22 **A.** Right.

23 **Q.** That's what doctors do, right?

24 **A.** Yes.

03:14:32 25 **Q.** And if a patient came in on a drug that was working

Cross-Owen/By Ms. Bolen

1 for them, for example, Derek Guitreau, where he has had
2 the orthopedic surgeon overseeing him, comes to Dr. Evans
3 for pain management, there's nothing wrong about talking
4 about those drugs he's been on; correct?

03:14:48

5 **A.** Correct.

6 **Q.** And there's no set guideline or standard that tells
7 the doctor exactly how to act when they encounter an
8 aberrant behavior, is there?

03:15:01

9 **A.** There's a spectrum of things you can do with, given
10 the context of aberrant drug taking behavior.

11 **Q.** Right. And the physician actually has some
12 discretion on how to respond; correct?

13 **A.** Yes.

14 **Q.** And different physicians respond different ways?

03:15:12

15 **A.** Correct.

16 **Q.** Somebody conservative with regard to opioids might
17 have a zero tolerance policy and say, "Hey, you just asked
18 me for a certain drug. I think that's bad. I'm going to
19 get you out of here." Somebody might do that?

03:15:25

20 **A.** I don't think anybody's ever said that asking for a
21 certain drug is aberrant drug taking behavior.

22 **Q.** In fact, they've said the opposite; is that correct?

23 **A.** Correct.

24 **Q.** Now, what about with regard to the drug testing.

03:15:36

25 There's no algorithm of formula or a map that a physician

Cross-Owen/By Ms. Bolen

1 follows if somebody has a positive THC; right?

2 **A.** There are patterns, not exact algorithm, but there
3 are certain things that you do like confirm the test.

4 **Q.** Right. If your patients can afford it?

03:15:57

5 **A.** If you can't afford the test to watch your safety, I
6 don't think you can afford the treatment.

7 **Q.** But, again, that's not required by the Texas Medical
8 Board during this period?

9 **A.** No, it wasn't. But the standard of care required it.

03:16:08

10 **Q.** And, in fact, it wasn't even the Texas Pain Society's
11 position until 2014, when it put out its drug testing
12 policy; correct?

13 **A.** No. We published an article in 2012 on urine drug
14 testing.

03:16:21

15 **Q.** You published the article, but the actual policy
16 didn't come out until 2014; correct?

17 **A.** I don't know that -- we have -- we wrote a white
18 paper, I think. But I don't know what you mean about
19 putting a policy out. I think a urine drug testing
03:16:41 20 article gave physicians a very clear idea of what you
21 should be doing as your standard of care.

22 **Q.** Do you recall that the Texas Pain Society actually
23 put out a drug testing policy?

24 **A.** I don't recall what you're referring to.

03:17:07

25 **Q.** All right. I'll come back to that in a moment if I

Cross-Owen/By Ms. Bolen

1 just a few more questions here. The Texas Medical Board
2 rule back then, during the period we're talking about said
3 the records should include and then it gave a list of
4 things; right?

03:17:29

5 **A.** Yes.

6 **Q.** It should include a medical history and a physical
7 exam; correct?

8 **A.** Yes.

03:17:37

9 **Q.** And just because you may not like the way that a
10 doctor has documented something, that doesn't make him
11 somebody who stepped outside of being a doctor into
12 something else, does it?

13 **A.** No.

03:17:50

14 **Q.** And the doctor's medical records should reflect any
15 diagnostic therapeutic or lab results; right?

16 **A.** Yes.

17 **Q.** Did you see the lab reports in some of the charts
18 that you looked at?

19 **A.** Yes.

03:17:57

20 **Q.** And it's supposed to include treatment objectives;
21 correct --

22 **A.** Yes.

23 **Q.** -- written down? A discussion of the risk and
24 benefits like the informed consent that we just looked at;
03:18:09 25 correct?

Cross-Owen/By Ms. Bolen

1 A. Yes.

2 Q. And the treatments that were done; correct?

3 A. Yes.

4 Q. And the medications that were prescribed, the date;
03:18:17 5 right?

6 A. Yes.

7 Q. The dose; right?

8 A. Yes.

9 Q. And the quantity that's prescribed?

03:18:22 10 A. Yes.

11 Q. And any changes to that; right?

12 A. Yes.

13 Q. And you saw that in those charts, didn't you?

14 A. I saw it in some of the documentation, in the record,
03:18:33 15 yes.

16 Q. There were prescription copies in all of the charts
17 you reviewed, weren't there, Dr. Owen?

18 A. Yes.

19 Q. Now, you mentioned about the Texas prescription drug
03:18:47 20 monitoring program. Do you remember testifying about that
21 topic?

22 A. Yes.

23 Q. Now, you actually gave testimony on that -- some of
24 the recent changes to the law on the Texas prescription
03:18:59 25 drug monitoring program?

Cross-Owen/By Ms. Bolen

1 **A.** Yes.

2 **Q.** The Texas prescription drug monitoring program -- I'm
3 just going to call it the drug database, to be short --
4 that is a tool that doctors now have and law enforcement
5 have to look in to see what medicine a patient has
6 received from a pharmacy; right?

7 **A.** Yes.

8 **Q.** And isn't it true, Dr. Owen, that at least during
9 part of the period of 2008 to 2013, doctors didn't have an
10 electronic option until later in that period? They had to
11 make an order to the Texas Department of Public Safety to
12 get a copy of it in the mail; correct?

13 **A.** Yes.

14 **Q.** And then they got the ability to dial in, if you
15 will, electronically, and then download the reports;
16 right?

17 **A.** Yes.

18 **Q.** Are you aware, sir, that in Dr. Evans' charts there
19 are many examples of downloaded DPS records on patient
20 medication in those charts, are you aware of that?

21 **A.** I think in the newer charts I saw with the discharge
22 patients, I saw some of that, yes.

23 **Q.** Sure. And that's because of the timing of getting
24 the electronic version; right?

25 **A.** Yes.

Cross-Owen/By Ms. Bolen

1 Q. Do you remember the date, approximately?

2 A. I'm thinking it was 2013, but I don't remember
3 exactly.

4 Q. You're right. It was 2013, at least by my
5 understanding.

03:20:15

6 And then recently something else happened
7 where the doctor could use an agent to dial in to get the
8 information; right?

9 A. Yes, ma'am.

10 Q. And that was really important to doctors to have
11 that; correct?

03:20:24

12 A. Yes.

13 Q. And the reason it was important is because your time
14 is spent doing certain doctor things and to be able to
15 have a staff member to do that was a good thing. It saved
16 time for everybody; right?

03:20:34

17 A. Yes, ma'am.

18 Q. You mentioned about Ms. Gardner, the patient,
19 Samantha Gardner, and I believe government counsel asked
20 you about what you thought should happen if somebody had a
21 third-party phone call come in saying that they were
22 shooting up their drugs. Do you recall that testimony?

03:20:50

23 A. Yes.

24 Q. Now, isn't it true, that doctors actually have an
25 ethical obligation not to abandon their patients?

03:21:04

Cross-Owen/By Ms. Bolen

1 **A.** Yes.

2 **Q.** And the definition of abandonment can mean just
3 dropkick a patient to the curb, or it can mean other
4 things, depending on the facts; right?

03:21:16

5 **A.** Yes.

6 **Q.** And in the situation of Ms. Gardner, Dr. Evans
7 actually downward adjusted her medication and you don't
8 know what discussion went on between that physician and
9 that patient, do you?

03:21:27

10 **A.** Correct.

11 **Q.** Now, in the review of the charts that you did,
12 certainly you saw the downward adjustments that Dr. Evans
13 made at the beginning of treatment of certain of these
14 patients?

03:21:42

15 **A.** I did.

16 **Q.** You did. Can you think of an example of where that
17 happened?

18 **A.** I can't remember the individual names.

19 **Q.** It happened on Audie Decoteau. Do you recall that?

03:21:52

20 **A.** I believe I remember seeing that, yes.

21 **Q.** In fact, Audie Decoteau reported he had been using
22 Fentanyl, which is a very powerful opioid; correct?

23 **A.** Yes.

24 **Q.** And Dr. Evans didn't prescribe it, do you remember
25 that?

03:22:06

Cross-Owen/By Ms. Bolen

1 **A.** I vaguely remember, yes.

2 **Q.** But you're not going to dispute the fact that there
3 were downward adjustments?

4 **A.** I'm not.

03:22:16

5 **Q.** And you don't know how many downward adjustments,
6 because you only looked at the charts that government
7 counsel gave you?

8 **A.** Correct.

9 MS. BOLEN: Your Honor, may I have a moment?

03:23:07

10 BY MS. BOLEN:

11 **Q.** Isn't it a fair statement, Dr. Owen, that evidence
12 based medicine talks about best practices essentially;
13 right?

14 **A.** No. It defines the standard of care.

03:23:21

15 **Q.** By your definition; right?

16 **A.** Yes.

17 **Q.** And that's not something that the Texas Medical Board
18 referred to, did it?

19 **A.** In the rule?

03:23:31

20 **Q.** Correct.

21 **A.** Correct.

22 **Q.** And isn't it true that a doctor can be outside of
23 what you're calling standard of care, and still not be
24 dealing drugs?

03:23:40

25 **A.** Correct.

1 MS. BOLEN: I'll pass the witness, Your Honor.

2 THE COURT: Why don't we take a break. I know
3 you've got some redirect, but let's go ahead and take a
4 30-minute break.

03:24:20

5 **(The following was held out of the presence of the jury)**

6 THE COURT: Might be a little less than 3:30,
7 but it will be 3:50.

8 **(Recessed at 3:24 p.m.)**

03:53:44

9 THE COURT: Mr. Joubert, would you and counsel
10 approach just a second.

11 MR. JOUBERT: Yes, sir.

12 THE COURT: How much time do you need with this
13 witness?

14 MR. JOUBERT: Ten, 12 minutes.

03:53:57

15 THE COURT: Do you have another witness ready?

16 MR. JOUBERT: Yes, sir.

17 THE COURT: Okay. Good deal, I didn't want you
18 to spend our time just filling in time just in case you
19 were going to have another witness.

03:54:06

20 MR. JOUBERT: Yes, sir. So the Court --

21 THE COURT: I get so suspicious when I'm
22 dealing with lawyers.

23 MR. OLLISON: Judge.

03:54:30

24 MR. JOUBERT: Judge, there's something I need
25 to ask you -- oh, yes, sir. I did not -- intentionally did

1 not ask the expert to be designated as such in the presence
2 of the jury.

3 THE COURT: It hasn't been objected to.

03:54:48

4 MR. JOUBERT: No. But is it -- I'll do so now
5 on the record and ask that the Court will designate him as
6 an expert, and I will not have --

7 THE COURT: Has he been designated as an expert
8 previously?

9 MR. JOUBERT: Yes.

03:54:58

10 THE COURT: He's testified?

11 MR. JOUBERT: Yes.

12 THE COURT: That's fine. I just wanted to make
13 sure that you didn't want run into that objection.

03:55:07

14 MS. BOLEN: No. I think you put the
15 credentials in and essentially it did, without saying it, I
16 think.

17 MR. JOUBERT: I just wanted to be on the
18 record.

03:55:16

19 THE COURT: Okay. Would you have the witness
20 come in, please.

21 **(The following was held in the presence of the jury)**

22 THE COURT: All right. Be seated, please. All
23 right, Mr. Joubert, you may go ahead and proceed when
24 you're ready.

03:56:07

25 MR. JOUBERT: Thank you, Your Honor.

Redirect-Owen/By Mr. Joubert

1 **REDIRECT EXAMINATION**

2 BY MR. JOUBERT:

3 Q. Dr. Owen, do you need any water?

4 A. I have half a bottle. Yes. Thank you.

03:56:15 5 Q. Good. I noticed you need some earlier. Not that
6 we're going to have you much longer, I just want to be
7 sure. I want to go over a few points that Ms. Bolen asked
8 you about.

9 First, I want to start with, if you will,
03:56:37 10 compare for the jury or Ms. Bolen ran through this rather
11 quickly, but she asked you questions whether the standard
12 of care set the minimum standards and then juxtaposed that
13 with the Texas Administrative Code, and Chapter 170, which
14 talks about pain management. Can you explain that
03:57:02 15 distinction to the jury, quickly?

16 A. Yes, sir. So in 170, it tells you what you need to
17 do documentation wise. So it says you should perform an
18 adequate -- it says you perform a problem focused
19 evaluation. But it doesn't tell you how to perform a
03:57:21 20 problem focused evaluation. The standard of care does.
21 So Rule 170 does not dictate the standard care, it
22 dictates the documentation that's required to justify your
23 treatments.

24 Q. I failed to ask you earlier, and I'm glad you
03:57:37 25 mentioned this term again. But can you tell the jury what

Redirect-Owen/By Mr. Joubert

1 "problem focused evaluation" means?

2 **A.** It means that you don't have to do a comprehensive
3 evaluation if they have one small problem. You focus on
4 the problem. If you got low back pain, you don't need to
5 look in their ear or their throat. You just focus on the
6 issues pertaining to treatments of low back problems.

7 **Q.** Now, I think Ms. Bolen made it clear that there's a
8 distinction between the standard of care and what
9 Chapter 170 of the Texas Administrative Code says with
10 regard to standards. And as I understand that, the
11 minimum standard is set under Chapter 170; correct?

12 **A.** The minimum documentation standard is set under 170.

13 **Q.** And when you say documentation standard, does that
14 include things like maintaining proper medical records?

15 **A.** Yes, sir.

16 **Q.** That would be the patient files we're looking at;
17 correct?

18 **A.** Yes, sir.

19 **Q.** Now, I think you told us that in your opinion -- in
20 your opinion, Dr. Evans did not maintain a standard of
21 proper standard of care, is that correct?

22 **A.** Yes, sir.

23 **Q.** My question to you now is in consideration 170,
24 Paragraph 170, or is it Rule 170?

25 **A.** It's a Rule 170, yes.

Redirect-Owen/By Mr. Joubert

1 Q. Rule 170 under the pain management and the Texas
2 Administrative Code, in your opinion, did Dr. Evans
3 maintain the minimum standards under Rule 170?

4 A. He did not.

03:59:08

5 Q. So in the --words of Ms. Bolen when she asked you
6 about whether the doctor completely stepped outside of the
7 minimal guidelines and requirements, is it your opinion
8 that Dr. Evans, in fact, did step outside of the minimum
9 guidelines of requirements?

03:59:28

10 A. Yes, sir.

11 Q. Ms. Bolen asked you a number of questions about
12 whether drug testing was a -- I'm not clear if it was a
13 minimally required tool or standard tool to use when
14 treating pain management or doctors using -- practicing
15 pain management.

04:00:11

16 My question is whether the finding of
17 THC -- that would be the active ingredient in marijuana --
18 in a blood test, would that fall with -- well, finding
19 that and failing to take action on it, or continuing to
20 write prescriptions for a patient with evidence of taking
21 marijuana, would that below the standards, even the
22 minimum standard under Rule 170?

04:00:29

23 A. Yes, sir, it would, whether you find the THC in the
24 urine or blood.

04:00:44

25 Q. And, of course, if you're not doing medical tests at

Redirect-Owen/By Mr. Joubert

1 all, which you testified of the files you saw, you only
2 saw one file out of 17 and 18 where blood test was
3 ordered. Would that be below the minimum standards of
4 Rule 170?

04:00:59

5 **A.** It's below the standard of care. 170 doesn't address
6 urine drug.

7 **Q.** Okay. So then my question is urine drug testing part
8 of the minimum standards under Rule 170?

04:01:15

9 **A.** It's part of the minimum standard of care, but it's
10 not something required by Rule 170.

11 **Q.** Not required by 170. Ms. Bolen also asked you about
12 a patient by the name of Calvin McDonald and she asked if
13 in fact you agreed that the pattern of prescribing for
14 Ms. McDonald did not fit a pattern that, I guess, the
15 other files did or the files -- well, did not fit a
16 pattern that the patient receive the same prescription or
17 the same level of drugs every month.

04:01:46

18 My question to you is whether, in your
19 opinion, you found a pattern of prescribing by Dr. Evans
20 which was inconsistent with the proper standard of care?

04:02:04

21 **A.** I did primarily because there wasn't therapeutic
22 benefit reliably documented; therefore, there wasn't
23 medical necessity to continue to prescribe it.

24 **Q.** And I think she asked you about a couple of other
25 files, including a Audie Decoteau and Eddie Mathern. And

04:02:24

Redirect-Owen/By Mr. Joubert

1 if you would agree then that in those cases that this
2 pattern of prescribing by the doctor where he made
3 adjustment, whether that was -- those were significant
4 medical adjustments. My question to you is, if you recall
04:02:46 5 the name, did you see the name, Audie Decoteau, in the
6 file?

7 **A.** I remember the name.

8 **Q.** Did you see the file for Eddie Methern or Mathern?

9 **A.** Yes, sir.

04:02:56 10 **Q.** M-A-T-H-E-R-N, I think it is.

11 **A.** Yes, sir.

12 **Q.** And there was a third one we talked about, was it --
13 perhaps it was a Samantha Gardner?

14 **A.** Yes.

04:03:07 15 **Q.** With regard to those files, is it your testimony,
16 that it appears that Dr. Evans prescribed opioid and
17 narcotic medications outside the course of professional
18 practice and not for legitimate medical purpose?

19 **A.** Yes, sir.

04:03:22 20 **Q.** Now specifically, as to those persons -- well, Calvin
21 McDonald and Eddie Mathern, I think you also testified on
22 direct examination that you -- in review of patient files
23 for those patients or the patient charts, you found that
24 the patients actually got worse after they continued on
04:03:48 25 narcotic medication, is that correct?

Redirect-Owen/By Mr. Joubert

1 **A.** Yes, sir.

2 **Q.** My question to you is: Ms. Bolen asked you questions
3 about whether doctors have an ethical obligation to
4 abandon medication because then the fact with Ms. Gardner,
04:04:06 5 you've talked about earlier, the fact that the doctor gave
6 her a prescription even after she came in with what
7 appeared to be injection track mark on her hands. Do you
8 remember that?

9 **A.** Yes.

04:04:18 10 **Q.** So my question is: If doctor prescribes medication
11 as Dr. Evans did, is that consistent with his ethical
12 obligation in the case of Samantha Gardner under the
13 Hippocratic oath?

14 **A.** No, you don't have to abandon her. But if she's
04:04:34 15 injecting the drug, you don't want to further endanger her
16 or enable her addiction, so you don't have to prescribe
17 the oxycodone, but you can either treat her with Suboxone,
18 give her other kind of withdrawal medication treatment, or
19 send her to an addiction facility.

04:04:50 20 **Q.** And if you recall reviewing the file of Samantha
21 Gardner, was there any indication that Dr. Evans referred
22 her for Suboxone treatment?

23 **A.** No, sir.

24 **Q.** You heard -- in fact, Ms. Bolen brought to the
04:05:05 25 attention, your attention, the fact that she asked you if

Redirect-Owen/By Mr. Joubert

1 you were aware that Dr. Evans had -- is it an X
2 registration, is that Suboxone registration?

3 **A.** Yes, sir.

04:05:20

4 **Q.** And you did see that in the files you reviewed, did
5 you not?

6 **A.** I know that he had an X number.

04:05:34

7 **Q.** But then back to Samantha Gardner, was there any
8 indication that Dr. Evans offered to treat her for
9 Suboxone, or at least is there any documentation in his
10 files that it was either the suggested, recommended or, in
11 fact, done, that he treated her with Suboxone?

12 **A.** No, sir, there's no evidence.

04:05:49

13 **Q.** Is there any other reference documentation in the
14 file that he may have referred her to a drug
15 rehabilitation facility?

16 **A.** No, sir.

04:06:07

17 **Q.** And back to Hippocratic Oath now. My question is
18 with regard to Samantha Gardner, Calvin McDonald, Eddie
19 Mathern, did Dr. Evans have -- under the Hippocratic Oath,
20 didn't he have an obligation to do no harm?

21 **A.** Correct.

04:06:18

22 **Q.** In your professional opinion, in prescribing another
23 prescription for Samantha Gardner and releasing her as a
24 patient, even though the prescription may have been less
25 than the prior prescription, in terms of dosage units, was

Redirect-Owen/By Mr. Joubert

1 that an -- a violation of Dr. Owen's ethical obligation?

2 **A.** Of doctor whose ethical obligation?

3 **Q.** I'm sorry. I'm sorry. I said Dr. Owen. I should
4 have said Dr. Evans.

04:06:34

5 **A.** It is a violation. You don't want to do any harm and
6 further enable a situation, giving her oxycodone when
7 she's misusing it, increases -- gives her a potential risk
8 for harm.

04:07:02

9 **Q.** Let me ask you if -- I'm going to ask this question
10 because Ms. Bolen asked you on no less than three
11 occasions whether you observed any downward adjustments in
12 medications among the patient charts you reviewed. I want
13 to direct your attention to the chart of Kimberly
14 Richardson and ask you if -- if you recall, she was first
15 prescribed approximately 250 -- I'm sorry 250 dosage units
16 of Roxicodone and then it was -- it went --

04:07:21

17 THE COURT: 250 or 150?

18 MR. JOUBERT: 150, I'm sorry, Your Honor, thank
19 you.

04:07:37

20 BY MR. JOUBERT:

21 **Q.** 150, dosage units or pills, and it went up to 180 and
22 then came back down to 150. Now, if the patient has an
23 argument with the physician in which in her mind she felt
24 that that downward adjustment was made because of the
25 argument, not because of any medical change in her

04:07:55

Redirect-Owen/By Mr. Joubert

1 circumstance, would that be proper medical care under --
2 well, by Dr. Evans under the standard of care?

3 **A.** No. You would use a does that's providing a
4 therapeutic benefit, regardless of other situations.

04:08:12

5 **Q.** You review the dosage that would provide therapeutic
6 benefit?

7 **A.** Yes, sir.

04:08:23

8 **Q.** So then if the patient, Ms. Richardson comes back and
9 has a second argument with the doctor because he lowered
10 it to 150, and she wants it raised higher, and he does so,
11 he in fact raises it higher, in her mind, she would say
12 that the -- he raised it -- the amount because of the
13 argument because she told him she was going to take her
14 business elsewhere. Would that be a therapeutic benefit
15 or a legitimate basis in which to increase the dosage
16 back, say, up to 210 dosage units?

04:08:42

17 **A.** No, sir.

04:09:05

18 **Q.** Is it your opinion that physicians who practice pain
19 medicine must abide by the regulations by the Texas
20 Medical Board as well as in the case we talked about under
21 Rule 170 for pain management under the Texas
22 Administrative Code, as well as federal guidelines and
23 regulations?

24 **A.** Yes, sir.

04:09:19

25 **Q.** And, lastly, have you ever had staff, medically

Redirect-Owen/By Mr. Joubert

04:09:47

1 untrained staff, have you ever had medically untrained
2 staff in your office who would conduct blood pressure,
3 take blood pressure, interview the witness as far as
4 medical notes go with regard to how they're doing on their
5 drugs, things of that sort, have you ever had an
6 unlicensed massage therapist in your pain practice when
7 you had one?

8 **A.** No, sir.

9 **Q.** Have you ever had an unlicensed physical therapist?

04:10:00

10 **A.** No, sir.

11 **Q.** Or massage therapist in your practice?

12 **A.** No, sir.

13 MR. JOUBERT: No further questions at this
14 time, Your Honor.

04:10:16

15 THE COURT: All right, sir, you may step down.
16 Thank you very much. Do you want to excuse this witness or
17 do you want to --

18 MR. JOUBERT: Yes, Your Honor.

04:10:29

19 THE COURT: Are you waiting to see whether or
20 not this is going to be something else, some rebuttal or
21 otherwise?

04:10:40

22 MR. JOUBERT: I've discussed that with him,
23 Your Honor. We'd like for him to be able to go back to the
24 Austin area today. I'm not sure his schedule would permit,
25 but we will inform the Court.

1 THE COURT: Well, I want him to remain under
2 the Rule if he's going to be potentially -- if there's any
3 potential for call back. That's what I'm doing. In other
4 words, he would not be able to talk about this case to
04:10:55 5 anyone except you and opposing counsel, or particularly any
6 other witnesses in the case during the course of his
7 absence --

8 MR. JOUBERT: Yes, Your Honor.

9 THE COURT: -- during the course of his
04:11:05 10 absence.

11 MR. JOUBERT: We'd ask that he remain under the
12 Rule and instructed not to.

13 THE COURT: All right. I just did. Thank you,
14 sir. Have a good day. Who's your next witness?

04:11:17 15 MR. JOUBERT: Your Honor, the United States
16 calls Mr. David DiVido.

17 THE COURT: All right. Is he outside?

18 MR. JOUBERT: I think he is, Your Honor.

19 THE COURT: All right. Good afternoon, sir.

04:11:48 20 THE WITNESS: Good afternoon.

21 THE COURT: I'll take -- I don't think I swore
22 you in.

23 THE WITNESS: Not yet.

24 THE COURT: All right. Raise your right hand.

04:11:55 25 Do you solemnly swear that the testimony

Direct-Devido/By Mr. Joubert

1 you are about to give will be the truth, the whole truth
2 and nothing but the truth, so help you God?

3 THE WITNESS: Yes, sir.

04:12:07

4 THE COURT: Please have a seat and adjust the
5 microphone, please, sir so that you're speaking directly
6 into it.

7 **DAVID DEVIDO,**
8 after having been first cautioned and duly sworn, testified
9 as follows:

04:12:33

10 **DIRECT EXAMINATION**

11 BY MR. JOUBERT:

12 **Q.** Good afternoon?

13 **A.** Good afternoon.

14 **Q.** Would you pull that microphone close to you, please?

04:12:39

15 It does move. Thank you.

16 **A.** That okay?

17 **Q.** That's better. Much better. Thank you, sir. Will
18 you state your name and spell your last name for the
19 ladies and gentlemen of the jury, please?

04:12:49

20 **A.** David DeVido, D-e-V-i-d-o.

21 **Q.** Mr. DeVido, are you or have you been in the past a
22 registered pharmacist in the state of Texas?

23 **A.** Yes, sir.

04:13:09

24 **Q.** And I'm going to get to that question in a few
25 minutes, but before we do, I'd like to ask you a few other

Direct-Devido/By Mr. Joubert

1 questions about your appearing here today. Were you
2 originally named in a indictment with Dr. Richard Arthur
3 Evans?

4 **A.** Yes.

04:13:28

5 **Q.** And were you and Dr. Evans charged together in a
6 number of different charges, including conspiracy to
7 distribute narcotic drugs, as well as mail fraud and in
8 your case, I believe healthcare fraud?

9 **A.** Yes, sir.

04:13:49

10 **Q.** Now, are you appearing here today because you have in
11 fact made an agreement with the United States to testify
12 and to do so truthfully, which has led to your testimony
13 here today, or to you appearing for testimony today?

14 **A.** Yes, sir.

04:14:13

15 **Q.** Before I go any further on your background, I want to
16 go through with you, your understanding of the agreement
17 that you have with the United States. First of all, did
18 you enter a plea to a separate charge, that is one
19 different from what's in the indictment?

04:14:30

20 **A.** Yes, sir.

21 **Q.** Under section -- I'm sorry, Title 21 Section 843A3 of
22 the United States Code?

23 **A.** Yes, sir.

04:14:48

24 **Q.** And did you enter a guilty plea to that charge in
25 exchange -- well, as part of your agreement with the

Direct-Devido/By Mr. Joubert

1 United States, understanding that if you were to cooperate
2 and do things, that we would ask such as testify here,
3 then your charges in the original indictment would be
4 dismissed?

04:15:02

5 **A.** Yes, sir.

6 **Q.** In fact, there were, there was an original indictment
7 and there was a second indictment; correct?

8 **A.** Yes, sir.

04:15:13

9 **Q.** And both of those will be dismissed pursuant to this
10 agreement and based on your guilty plea to the 843 charge,
11 is that correct?

12 **A.** Yes, sir.

04:15:29

13 **Q.** Now, I want to go through with a little bit more
14 detail your understanding of this agreement. First of
15 all, does the agreement call for your full cooperation?

16 **A.** Yes, sir.

17 **Q.** And did I ask you -- I did not ask you, did you in
18 fact enter a guilty plea to the charge I just discussed
19 with you on 843, last Monday the 11th of July?

04:15:48

20 **A.** Yes, sir.

21 **Q.** So you did that before this trial started?

22 **A.** Yes, sir.

04:16:10

23 **Q.** Now, as part of your agreement, if you cooperate and
24 continue to cooperate fully, the United States has
25 agreed -- well, let's first talk about your part of the

Direct-Devido/By Mr. Joubert

1 agreement. You agreed that this -- first of all, the
2 agreement only binds the local district here, the Southern
3 District of Texas, is that correct?

4 **A.** Yes, sir.

04:16:24

5 **Q.** And then it, also -- you have agreed to testify
6 truthfully as a witness if you're called to do so such as
7 you are here today; correct?

8 **A.** Yes, sir.

04:16:35

9 **Q.** And have you agreed to voluntarily attend any
10 conferences and interviews and we'll talk about those in a
11 few minutes, which you've done with me, have you not?

12 **A.** Yes, sir.

04:16:48

13 **Q.** Did you also agree to provide truthful and complete
14 and accurate information and understand that any false
15 statements made by you in a court could later be
16 prosecuted under the appropriate perjury or false
17 statement and obstruction charges? Did you agree to that?

18 **A.** Yes, sir.

04:17:09

19 **Q.** Did you also agree to provide the United States any
20 documents or documents in your control which we may
21 request?

22 **A.** Yes, sir.

04:17:29

23 **Q.** Now, as to the agreements of the United States is it
24 your understanding that the United States as I indicated,
25 has agreed that you should enter a plea, we call it the

Direct-Devido/By Mr. Joubert

04:17:47

1 criminal information, the charge you pled under 841 last
2 Monday, and you persist in that plea, that the -- and if
3 the Court accepts this agreement the Court will move to
4 dismiss the original indictment and any subsequent
5 indictments as I mentioned before; correct?

6 **A.** Yes, sir.

04:17:59

7 **Q.** And at the time of sentencing the United States
8 agrees not to oppose your request for what may be called a
9 downward level departure under the sentencing guidelines,
10 which has certain other regulations regarding those. Do
11 you remember that?

12 **A.** Yes, sir.

04:18:12

13 **Q.** And then also, did you agree that as part of this
14 agreement, you would make contributions of any proceeds
15 that you gained out of this criminal conduct, in what we
16 would call ill-gotten gains, you've agreed to make
17 donations both to the University of Houston School of
18 Pharmacy and to the Texas Southern University, is that
19 correct?

04:18:28

20 **A.** Yes, sir.

21 **Q.** In the amounts of \$250,000 each?

22 **A.** Yes, sir.

04:18:45

23 **Q.** Did you further agree that -- understand that part of
24 the agreement is that if you fulfill your obligations
25 under the agreement and the United States would agree to

Direct-Devido/By Mr. Joubert

1 recommend a sentence at a lower end of the applicable
2 guideline range, that's similar to what I asked you about
3 earlier about the reductions in levels. Do you remember
4 that?

04:18:58

5 **A.** Yes, sir.

6 **Q.** Okay. And then lastly as part of your cooperation,
7 you understand within the agreement, that you may be
8 entitled to, if at the discretion of the United States, if
9 you qualify for what we would call an additional

04:19:14

10 reduction, we could ask the judge for based on your
11 substantial assistance we call it. Do you understand
12 that?

13 **A.** Yes, sir.

14 **Q.** Did your lawyer talk to you about this agreement and
15 go through all the details?

04:19:25

16 **A.** Yes, sir.

17 **Q.** Is there any question you have about the agreement
18 before we proceed here with your testimony?

19 **A.** No, sir.

04:19:33

20 **Q.** And you understand pursuant to your written
21 agreement, which, in fact, exists in 13 pages that the
22 ultimate issue concerning your sentence or any punishment
23 you may receive will be left up to the Court?

24 **A.** Yes, sir.

04:20:01

25 THE COURT: I don't think we gave you any

Direct-Devido/By Mr. Joubert

1 water. Do you need some water there, sir?

2 THE WITNESS: I will.

3 THE COURT: I think they brought some up.

4 MR. JOUBERT: Thank you, Your Honor.

04:20:09

5 BY MR. JOUBERT:

6 Q. If you'd like.

7 A. Thank you.

04:20:35

8 Q. Now, Mr. DeVido, as the last part of the agreement, I
9 want to ask you about is exactly what you pled guilty to

10 doing, and I want to go through -- I can ask you if you
11 could explain it in your own language, if you'd like, or I
12 can go through the questions pertaining to the factual
13 basis for your guilty plea. Which would you prefer?

14 A. Could you read it, please?

04:20:51

15 Q. Okay.

16 A. And then I can comment.

17 Q. Thank you. We talked about before the Court last
18 Monday that you have been a licensed pharmacist in Houston
19 and Texas since 1964 until 2015, do you remember that?

04:21:01

20 A. Yes, sir.

21 Q. And that you were -- been registered with the Drug
22 Enforcement Administration under a special registration
23 number to be able to dispense controlled substances?

24 A. Yes, sir.

04:21:15

25 Q. And that as part of your -- part of that

Direct-Devido/By Mr. Joubert

1 registration, you are permitted to dispense Scheduled III
2 and Schedule II controlled substances in this case
3 particularly, oxycodone and hydrocodone, do you remember
4 that?

04:21:32

5 **A.** Yes, sir.

6 **Q.** Now, as part of the agreement, you did fill and
7 dispense certain prescriptions written by Dr. Richard
8 Evans, did you not?

9 **A.** Yes, sir.

04:21:42

10 **Q.** And that you have agreed that and pled guilty to the
11 fact that between 2009 and 2012, you filled prescriptions
12 for Dr. Evans written for oxycodone and hydrocodone
13 outside the course of professional practice and not for
14 legitimate medical purpose. Do you remember that?

04:21:59

15 **A.** Yes, sir.

16 **Q.** And that most of these prescriptions were for
17 customers from the state of the Louisiana and these were
18 Dr. Evans' prescriptions, large quantities of oxycodone
19 products, do you understand that?

04:22:13

20 **A.** Yes, sir.

21 **Q.** And then further, the section of the law that you
22 pled to had to do with in order to maintain the supply of
23 oxycodone products sufficient to fill the prescriptions
24 written by Dr. Evans, you had to make maximum daily orders
25 of oxycodone from your wholesaler, do you remember that?

04:22:32

Direct-Devido/By Mr. Joubert

1 **A.** Yes, sir.

2 **Q.** And that in so doing, you deliberately and willfully
3 were blind to the fact that Dr. Evans was writing these
4 prescriptions outside the course of legitimate medical
5 practice and not for legitimate medical purpose. Do you
6 remember that?

7 **A.** Yes, sir.

8 **Q.** And that you, in fact, knowingly did acquire, that is
9 order new shipments of oxycodone in order to be able to
10 meet the high volume of scripts and supply or let's say
11 the dosage units of oxycodone written by Dr. Evans?

12 **A.** Yes, sir.

13 MS. BOLEN: Your Honor, I object to counsel
14 leading his witness it.

15 THE COURT: Let's approach just a second,
16 please.

17 **(The following was held at sidebar)**

18 THE COURT: He's reading from a document that's
19 in evidence, but not in this evidence.

20 MR. JOUBERT: Right.

21 THE COURT: I'm not sure that that's improper,
22 but what I believe you're challenging is the form of the
23 question?

24 MS. BOLEN: Yes.

25 THE COURT: Asked.

Direct-Devido/By Mr. Joubert

1 MS. BOLEN: An additional objection because of
2 what he's injecting into the question, it's more of a legal
3 standard.

04:24:02

4 THE COURT: Well, I think he can read that as a
5 legal standard, that's what the jury is going to have to
6 deal with about the definitions and whatever I give in
7 determining whether it's a fact issue, whether or not that
8 standard has been breached. The question I guess I have is
9 how long is this?

04:24:18

10 MR. JOUBERT: That was my last question, Judge.

11 THE COURT: Okay. I was trying to remember how
12 long the factual basis statement was.

13 MR. JOUBERT: About four paragraphs.

14 THE COURT: Was that all?

04:24:30

15 MR. JOUBERT: Yes, sir.

16 THE COURT: I thought it was several pages.

17 But any event, the objection as to the form of the
18 question, I'm going to sustain and if there are other
19 questions to ask about that, then they should be asked in a
20 different way.

04:24:44

21 MR. JOUBERT: Yes, Your Honor.

22 THE COURT: All right. Let's proceed.

23 **(The following was held in the presence of the jury)**

24 THE COURT: All right, counsel, proceed.

25

Direct-Devido/By Mr. Joubert

1 BY MR. JOUBERT:

2 Q. Lastly, Mr. DeVido, I want to ask you whether you
3 recall in your agreement that you also agreed to give up
4 your claim against any matters that were forfeited as a
5 result of a search warrant executed at your pharmacy back
6 in September 13th, 2012, do you remember that?

7 A. Yes, sir.

8 Q. And I think that amount was about \$29,000 in -- was
9 that checks or cash?

10 A. It was cash.

11 Q. Is there any other part of the agreement that I have
12 not covered that you understand to be part of your
13 agreement here?

14 A. I think that's covered it.

15 Q. All right. Thank you. Now, let's talk to the jury a
16 little about who you are, David DeVido. Tell the jury
17 where you were born, Mr. DeVido.

18 A. I was born in a village in up state New York called
19 Peekskill.

20 Q. Peekskill, New York?

21 A. Yes, sir.

22 Q. And somewhere in your early life, did you come to
23 Texas?

24 A. Yes.

25 Q. Tell the jury -- explain to the jury how that came

Direct-Devido/By Mr. Joubert

1 about.

2 **A.** I have an aunt and uncle in Fort Worth who knew I
3 wanted to go to school and I could not afford it, and they
4 invited me to come live with them.

04:26:28

5 **Q.** Okay. And what part of Texas were you living in when
6 you came to Texas?

7 **A.** Fort Worth, Texas.

8 **Q.** Fort Worth. All right. At some point to further
9 your education, did you come to Houston to the University
10 of Houston?

04:26:51

11 **A.** Yes.

12 **Q.** And what year did you study there?

13 **A.** At the University of Houston I studied pharmacy.

14 **Q.** And what year did you finish your pharmacy studies?

04:27:02

15 **A.** I got my BS in 1964.

16 **Q.** And shortly thereafter were you became a registered
17 pharmacist?

18 **A.** Yes, sir.

19 **Q.** We've already told the jury you were a registered

04:27:15

20 pharmacist at least until through last year. Tell the
21 jury, have you either not renewed your pharmacy license or
22 did you allow it to lapse or --

23 **A.** I did not renew it on my birthday.

24 **Q.** Last year?

04:27:29

25 **A.** Yes, sir.

Direct-Devido/By Mr. Joubert

1 Q. 2015. All right.

2 A. Yes.

3 Q. All right. As part of your training as a pharmacist,
4 did you have occasion to study chemistry?

04:27:51

5 A. Yes, sir.

6 Q. In fact, did you have chemistry courses?

7 A. Yes, sir.

8 Q. And as part of that training, did you also learn
9 about narcotic drugs?

04:28:01

10 A. Only the chemistry of it.

11 Q. The chemistry of it, that's what I meant. Now, as a
12 pharmacist were you required over the years to maintain
13 what we would call a continuing education about pharmacy?

14 A. Yes, sir.

04:28:19

15 Q. How many hours of continuing education were required,
16 at least through the last time you were licensed?

17 A. If I remember correctly it's 15 hours a year.

18 Q. All right. Now, tell the jury a little about the
19 number of different pharmacies you've owned. At some
04:28:47 20 point shortly after, in fact, you finished your pharmacy
21 studies, did you open up your own pharmacy?

22 A. In 1969.

23 Q. 1969. And you had a number of pharmacies, let's say
24 I think at least 6 between 1969 and 2001, is that correct?

04:29:11

25 A. Yes, sir.

Direct-Devido/By Mr. Joubert

1 Q. Now, as regard to Briargrove Pharmacy, have you owned
2 Briargrove Pharmacy twice?

3 A. Yes, sir.

04:29:25

4 Q. You first owned it back in 2001, you bought it and a
5 couple years after you left; correct -- or you sold it?

6 A. I sold it in 1999.

7 Q. 1999. I'm sorry.

8 A. And purchased it back in 2001.

9 Q. I'm sorry. You first purchased it in 1992?

04:29:41

10 A. Yes, sir.

11 Q. Is that correct?

12 A. Yes, sir.

13 Q. And then you sold it in '99. And then you bought it
14 back in 2000 -- what year?

04:29:50

15 A. '1.

16 Q. Tell the jury how that came about? How did you
17 happen to buy it back?

18 A. I sold it to a small chain called Horizon.

04:30:02

19 Q. Is that a group of pharmacies or cooperate
20 pharmacies?

21 A. They owned 35 pharmacies. And they wanted to expand
22 and they changed from an independent type pharmacy into a
23 chain pharmacy. And my customers didn't like the type of
24 service and they left. And the business dropped

04:30:24

25 60-percent and they did the same thing in their other

Direct-Devido/By Mr. Joubert

1 pharmacies and they could not pay their bills and they
2 went bankrupt.

3 Q. And did you buy it out of bankruptcy?

4 A. I bought the pharmacy back out of bankruptcy because
5 they were going to close it.

04:30:37

6 Q. In 2002?

7 A. 2001.

8 Q. I'm sorry. 2001. Thank you. Now, I want to show
9 you a photograph that's been -- Exhibit 87. If it has

04:30:52

10 not, I'd like to show it to you first, and just tell me
11 first of all if this is a photograph of Briargrove
12 Pharmacy?

13 A. Yes, sir, that's the front of the pharmacy with two
14 delivery vehicles.

04:31:08

15 Q. With two vehicles. Okay.

16 MR. JOUBERT: We'd offer Exhibit 87.

17 THE COURT: Objection?

18 MS. BOLEN: Your Honor, I need to see it. No
19 objection.

04:31:19

20 THE COURT: Admitted.

21 **(Government Exhibit 87 admitted)**

22 MR. JOUBERT: Thank you, Your Honor.

23 BY MR. JOUBERT:

24 Q. Mr. DeVido, I just wanted to show a picture of

04:31:28

25 Briargrove and ask you if this was your pharmacy. What's

Direct-Devido/By Mr. Joubert

1 the address of Briargrove Pharmacy?

2 **A.** 6435 San Felipe.

3 **Q.** And has that always been the address since you owned
4 it starting in '82?

04:31:41

5 **A.** No, sir. It was on Voss Road.

6 **Q.** All right. Very near the same location?

7 **A.** Next to the Randall's Pharmacy on Voss Road, next to
8 Randall's Grocery Store on Voss Road.

04:31:56

9 **Q.** Okay. And that would be pretty close to this current
10 address?

11 **A.** Exactly. Just around the corner.

12 **Q.** Around the corner. What year did it move around the
13 corner? That's okay it's not that important.

14 **A.** I don't remember.

04:32:13

15 **Q.** Okay. But you -- as indicated earlier, without going
16 through the details of each one, you've owned six
17 different pharmacies primarily on the west side of Houston
18 during the last 30 years, or maybe 40 years?

19 **A.** Yes, sir.

04:32:27

20 **Q.** Key Rexall Pharmacy?

21 **A.** That was my first one.

22 **Q.** Kirkwood Pharmacy?

23 **A.** Yes, sir.

24 **Q.** Briargrove, we talked about the first time?

04:32:32

25 **A.** Uh-huh.

Direct-Devido/By Mr. Joubert

1 Q. Park Plaza Pharmacy and Inter Urban Pharmacy?

2 A. There were two Inter Urban Pharmacies.

3 Q. Two Inter Urban Pharmacies. One on Lantern Lane and
4 Gessner and the other one at Kirkwood at Memorial?

04:32:48

5 A. Yes, sir.

6 Q. Now, let's direct your attention to 2008. Were you a
7 registered pharmacist still and practicing at Briargrove
8 Pharmacy?

9 A. Yes, sir.

04:32:59

10 Q. And were you, in fact, what we call the head pharmacy
11 in charge or chief pharmacist in charge?

12 A. Yes, sir.

13 Q. Which is it?

14 A. Well, in Texas they call it the PIC, the pharmacist
15 in charge.

04:33:10

16 Q. Okay. Now, at some point in about 2009, did you
17 begin to fill prescriptions for Dr. Richard Evans?

18 A. Late 2009.

19 Q. Okay. And that's not to say you may not have filled
20 some earlier, but my question is whether in late 2009, you
21 noticed an increase in the number of prescriptions written
22 by Dr. Evans for oxycodone, did you not?

04:33:35

23 A. We started to receive from him in December of 2009.

24 Q. Okay.

04:33:54

25 A. I think we had a few the month before, maybe 2 or 3.

Direct-Devido/By Mr. Joubert

1 Q. All right. And then were these -- again, were these
2 scripts for oxycodone and hydrocodone?

3 A. Yes, sir.

04:34:11

4 Q. Now, what about 2010, as you went into 2010, tell the
5 jury what you observed about the number of scripts from
6 Dr. Evans?

7 A. Well, in January around the 10th of January, we
8 started seeing an increase of a number of his patients
9 coming in with prescriptions for the oxycodone.

04:34:26

10 Q. And about that date, or about that month at least in
11 January 2010, did you have occasion to have a telephone
12 conversation with Dr. Evans?

04:34:51

13 A. In either late 2009 or early 2010, when I started
14 having patients come in with the prescriptions from his
15 office and I wasn't familiar with them, I called the
16 office to speak with him.

17 Q. Okay. And who did you speak with when you called the
18 office?

19 A. The lady identified herself as Rhoda.

04:35:01

20 Q. All right.

21 MR. JOUBERT: Your Honor, as part of his
22 testimony, we're going to offer under Rule 802(d)(3), not
23 only as co-conspirator statements, but maybe not
24 necessarily for the truth of the matter, but to simply show
25 what he did.

04:35:19

Direct-Devido/By Mr. Joubert

1 THE COURT: When you say statements, what
2 statements are you talking about? The statements of Rhoda?

3 MR. JOUBERT: Yes.

4 THE COURT: Or the statements of Dr. --

04:35:28

5 MR. JOUBERT: One of his employees, yes.

6 THE COURT: All right. Let me hear it.

7 BY MR. JOUBERT:

8 Q. Now, when you called Dr. Evans' office, did you speak
9 to a lady who identified herself as Rhoda?

04:35:41

10 A. Yes, sir.

11 Q. And what did you do, did you ask to speak with
12 Dr. Evans?

13 A. I told her I was receiving some prescriptions at my
14 pharmacy from Dr. Evans and I needed to talk to him about
15 it.

04:35:51

16 Q. Okay. And what did she tell you?

17 A. She said just a moment, please.

18 Q. Did Dr. Evans come to the phone?

19 A. Yes.

04:35:56

20 Q. And did you have a conversation with Dr. Evans about
21 the prescriptions at that time?

22 A. Yes.

23 Q. What did Dr. Evans -- what did you ask him and what
24 did he tell you?

04:36:05

25 A. Well, one, I wanted to find out about his pain

Direct-Devido/By Mr. Joubert

04:36:23

1 practice, and I asked him if -- a number of questions at
2 first. I think I asked was is he practicing pain
3 management only in this clinic and from the time he opened
4 up the clinic until the time he closed it, and he wasn't
5 practicing another form of medicine with it.

6 Q. In asking that question, was it your intent to
7 determine whether he was practicing pain medicine
8 full-time?

9 A. Yes, sir.

04:36:32

10 Q. Okay. What did Dr. Evans tell you?

11 A. He told me he was.

12 Q. And did you ask about his address at that time?

13 A. No. I asked him the next question was is that the
14 only place he was practicing pain management and he was
15 not practicing any other place -- another office.

04:36:48

16 Q. And what did Dr. Evans tell you?

17 A. He told me he was not practicing anyplace but
18 Augusta.

19 Q. All right. And what did you ask him next?

04:37:04

20 A. Then I asked him on patients who come in, was he
21 getting his patients on referral or were they just walking
22 in or how he was getting his patients. And he said most
23 of his patients were in referral.

04:37:27

24 Q. All right. Did you ask him anymore questions after
25 that?

Direct-Devido/By Mr. Joubert

1 **A.** Yes, I asked him then the patients who came in if
2 they had MRIs or X-rays, would he accept them from them,
3 if they were at least two years old, and he said, yes.
4 And then I asked what if they were over two years, he said
5 if he knew the physician that the patient had visited, he
6 would accept them.

04:37:45

7 **Q.** Okay. And did you also ask if he -- patients brought
8 in records, if they were verified?

9 **A.** Yes. I asked if the patients brought in the records
10 or the MRIs and so forth, if they would call the physician
11 who did them and get the followup on them.

04:38:07

12 **Q.** Did you ask Dr. Evans any questions about urinalysis?

13 **A.** Yes.

14 **Q.** What did you ask him?

04:38:22

15 **A.** I asked him does he conduct urinalysis on his
16 patients that were taking the oxycodone and so forth.

17 **Q.** In your mind, what was the importance of having a
18 urinalysis test?

19 **A.** Well, the urinalysis if there's an immediate test you
20 can test check for opioids, hydrocodone, other street
21 drugs and so forth. And to see if the people were a
22 patient who is abusing medicines.

04:38:39

23 **Q.** According to your understanding as a pharmacist,
24 doctors use the drug test as a diagnostic tool for those
25 purposes you just mentioned?

04:38:59

Direct-Devido/By Mr. Joubert

1 **A.** All the other doctors I filled with were running them
2 on every patient.

3 **Q.** What did Dr. Evans tell you about urinalysis?

4 **A.** He said he was doing it.

04:39:08

5 **Q.** Now, you just mentioned all the other doctors you
6 filled for were using the drug -- was it called urine drug
7 test, UDT?

8 **A.** Yes.

04:39:26

9 **Q.** UDT. Tell the jury now, during this time period you
10 had in fact been filling these controlled substances
11 prescriptions for a number of other doctors; right?

12 **A.** Yes, sir.

13 **Q.** Give the jury some idea of how many other doctors you
14 may have been filling for at the time.

04:39:36

15 **A.** Approximately eight.

16 **Q.** Eight. We may go through those names later, but my
17 point in asking that question now is you just testified
18 that you always -- I think you said you always ask
19 doctors, or you would call doctors whom you began to fill
20 controlled substance prescriptions for and you wanted to
21 talk to them before you continued to fill them. Is that
22 fair statement?

04:39:50

23 **A.** Yes, sir.

24 **Q.** Was that the nature of your call to Dr. Evans in
25 January of 2010?

04:40:04

Direct-Devido/By Mr. Joubert

1 **A.** Yes.

2 **Q.** Furthermore with regard to the type of test, the
3 diagnostic -- well, let's say the medical history and the
4 test that Dr. Evans said he got from patients, did you ask
5 him about the age of those tests?

04:40:16

6 **A.** Well, I asked if he would accept them over two years,
7 like five years.

8 **Q.** And what did he tell you?

9 **A.** He said no, that if they got to be that old then he
10 would run his own tests. He would run his -- send them
11 for the X-ray and MRI.

04:40:27

12 **Q.** So he said if the test was more than five years he
13 would conduct his own tests?

14 **A.** Yes, sir.

15 **Q.** Did he tell you that if there were tests that were
16 only two-years old, was that an exception or certain
17 special consideration he would give?

04:40:41

18 **A.** He would accept them and especially if he knew the
19 physician who was referring.

20 **Q.** If he knew the physician referring. All right. Now,
21 tell the jury this conversation you first had with
22 Dr. Evans, had you ever met him prior to that?

04:40:59

23 **A.** Pardon me?

24 **Q.** Had you ever met Dr. Evans prior to your telephone
25 conversation?

04:41:16

Direct-Devido/By Mr. Joubert

1 **A.** No, sir.

2 **Q.** In January 2010?

3 **A.** No.

04:41:25

4 **Q.** Did Dr. Evans seem either surprised, or was he short
5 with you or curt or anything less than professional?

6 **A.** No, he answered all the questions.

7 **Q.** He answered all your questions and you accepted those
8 answers truthfully?

9 **A.** Yes, sir.

04:41:36

10 **Q.** As being truthful.

11 Now, let me go to -- fast forward to a
12 year later, around January of 2011, did you have occasion
13 to have another telephone call that you made over to
14 Dr. Evans' office -- or I'm sorry -- or either you called
15 or did someone from Dr. Evans's call you?

04:41:59

16 **A.** Yes.

17 **Q.** Who called you?

18 **A.** Rhoda called me.

04:42:13

19 **Q.** Rhoda. Do you know Rhoda's last name? If you don't
20 that's fine?

21 **A.** I only know her as Rhoda.

22 **Q.** Have you ever met Rhoda?

23 **A.** Not that I know of.

04:42:22

24 **Q.** Not that you know of. What did Rhoda call about a
25 year later in January of 2011?

Direct-Devido/By Mr. Joubert

04:42:39

1 **A.** Rhoda called me and told me that she was calling for
2 Dr. Evans and that he was going to start seeing a lot more
3 patients from Louisiana and wanted to know if I could ship
4 the medications to Louisiana to the patients so that they
5 wouldn't have to come every month.

6 **Q.** All right. And what did you tell her?

7 **A.** I said I did not know. I would have to look in the
8 regulation -- the book of regulations and to look it up.

9 **Q.** And, in fact, did you do that?

04:42:54

10 **A.** Yes, sir, I looked it up.

11 **Q.** What did you conclude after you looked it up?

12 **A.** I concluded that I could mail and ship to Louisiana.

13 **Q.** Was this a book under the Texas Pharmacy Laws and
14 Regulations?

04:43:05

15 **A.** Yes, sir.

16 **Q.** And so once you made the determination that you
17 could -- I'm sorry, did you say already that you called
18 her back?

19 **A.** I called her back.

04:43:16

20 **Q.** Okay. And what did you tell her?

21 **A.** I told her, yes, that I looked it up and that we were
22 permitted to ship to Louisiana.

23 **Q.** And did you have any other questions for Rhoda at the
24 time?

04:43:26

25 **A.** Yes. I asked her how it was going to work.

Direct-Devido/By Mr. Joubert

1 Q. And when you say "this going to work" what were you
2 referring to?

3 A. Referring to how the patients were going to get their
4 prescriptions to the pharmacy.

04:43:38

5 Q. Okay.

04:43:57

6 A. And other physicians would write three prescriptions
7 in a row and give it to the patient and they would bring
8 it to the pharmacy. And they would give us one, some held
9 on to the one prescription, the other prescriptions, they
10 would take with them, some asked us to put them in our
11 file box in our pharmacy and when they needed it, they
12 would call us. And I asked Rhoda if the doctor is going
13 to write all three prescriptions at one time and then give
14 it to the patient for the patient to bring to the
15 pharmacy.

04:44:14

16 Q. Now, why did you ask that question or why was that
17 important to you?

04:44:25

18 A. It was -- I didn't know how we were going to receive
19 the prescriptions to be able to fill them because I had to
20 have --

04:44:40

21 Q. Well, I'm asking more specifically about -- the part
22 about whether you were going to write -- the doctor would
23 write the prescription at one time and give them all to
24 the patient or send them to the pharmacy. What was your
25 understanding about the ability of a physician to write

Direct-Devido/By Mr. Joubert

1 multiple prescriptions for what we call controlled
2 substances or C2 narcotic drugs?

04:44:57

3 **A.** If the physician saw the patient for one month he was
4 permitted to write for a total of three months, but on the
5 second and third prescription, there was is a line on the
6 bottom that says do not fill until, and the physician
7 would write the date in. So --

8 **Q.** Go ahead.

04:45:12

9 **A.** If the physician wrote a prescription for July 1st,
10 originally he didn't have to put that on the bottom. But
11 on the second prescription for the patient to be filled on
12 August 1st, he would date the prescription on the top
13 right-hand corner today's date, or the first date --
14 July 1st, and on the line on the bottom he would write, do
15 not fill until August 1st and on the third prescription he
16 would write on that line September the 1st.

04:45:31

17 **Q.** Okay.

18 **A.** So he was permitted to write -- to write three
19 prescriptions.

04:45:43

20 **Q.** Okay. And that was your understanding under the laws
21 of the State of Texas regarding the prescriptions for
22 controlled substance drugs, correct?

23 **A.** Yes, sir.

04:45:57

24 **Q.** And, in fact, was that your experience with other
25 physicians? You mentioned there were some eight or so

Direct-Devido/By Mr. Joubert

1 other doctors you would fill C2 or narcotic drug
2 prescriptions for, is that correct?

3 **A.** Yes, sir.

04:46:07

4 **Q.** Now, in your experience with the other doctors just
5 by comparison, did most of the doctors utilize the 90-day
6 option we call it or did they send over -- let me ask --
7 rephrase the question. In your experience, did other
8 physicians typically send all three prescriptions to you
9 at the time that they gave the first one to the patient or
10 how did you get them?

04:46:26

11 **A.** They gave the three prescriptions at one time to the
12 patient. They made one office visit and the physician has
13 written three prescriptions at that time.

04:46:38

14 **Q.** Okay. Now, let's go back to your conversation with
15 Rhoda. What did Ms. Mann tell you with regard to what
16 they planned to do?

04:46:54

17 **A.** Well, she told me that Dr. Evans would see the
18 patient in the initial office visit and write the
19 prescriptions, give the patient the prescription to be
20 filled for that day.

21 **Q.** The first one?

04:47:07

22 **A.** The first one. The other prescriptions would be put
23 into the file, and that the doctor would do a telephone
24 interview to see if the patient was having any problems
25 with the medication, and if it was relieving their pain

Direct-Devido/By Mr. Joubert

1 and he would ask them whatever other questions that was
2 necessary.

04:47:26

3 **Q.** Now, tell the jury why you made it a point to call
4 doctors or to ask them these elaborate questions about how
5 they planned to handle these prescriptions for C2 drugs.
6 Why did you go through all these questions and want to
7 have an understanding with the physician?

04:47:41

8 **A.** I wanted to have an understanding on how I was going
9 to be able to receive the prescription because I could not
10 dispense it to a patient or I cannot ship it to them
11 without having a prescription at my pharmacy to fill it.

04:47:57

12 **Q.** Right. Now, since you would be the pharmacist
13 dispensing these drugs under these prescriptions, was it
14 your understanding that you had a responsibility to be
15 sure that these prescriptions were being filled legally
16 and properly?

17 **A.** Yes, sir.

04:48:08

18 **Q.** And in order to do that, is it your testimony take
19 that that's why you would have these conversations with
20 both Dr. Evans and with his assistant, Rhoda?

21 **A.** Yes.

22 **Q.** And in your conversation with Rhoda, did you ask her
23 again about a telephone interview, if you recall?

04:48:33

24 **A.** I asked her how it was going to work with the
25 Dr. Evans, that he was going to write the one prescription

Direct-Devido/By Mr. Joubert

1 for the day, or for that day the patient was in, and other
2 two prescriptions he would write at that time and place
3 them in the patient's file.

4 **Q.** All right.

04:48:44

5 **A.** And then they would send the prescription to the
6 pharmacy after the patient had an interview with the
7 doctor on the telephone.

04:48:59

8 **Q.** Okay. Explain that last part. I want the jury to
9 understand that. What was your understanding about the
10 telephone interview?

11 **A.** Well, my understanding was the doctor would write the
12 prescription say like on July 1st.

13 **Q.** Okay.

04:49:11

14 **A.** On August 1st or a day before when the patient would
15 need the medication, the patient would call in to
16 Dr. Evans' office and identify themselves and the doctor
17 would then interview patient about their taking of the
18 medication, how they were reacting to it, if it was
19 relieving their pain and whatever other questions that he
20 had.

04:49:31

21 **Q.** And was it your understanding that that would be
22 sufficient to comply with the law with regard to the
23 prescribing and dispensing of C2 narcotics?

24 **A.** Yes.

04:49:42

25 **Q.** Okay. Now, I may have not heard you, but did you

Direct-Devido/By Mr. Joubert

1 tell the jury again, still in your conversation with
2 Rhoda, how -- did you ask her how you would get the
3 prescriptions, how your pharmacy would get the
4 prescriptions?

04:50:00

5 **A.** Yes, I asked her how I was going to receive those
6 prescriptions, if they were going to mail them to us, or
7 did she want me to send my delivery driver down. She said
8 no. When the doctor was satisfied with the phone
9 interview, they would have someone from the office to

04:50:18

10 bring it to me.

11 **Q.** All right. Now, we were talking about this call with
12 Rhoda in January of 2011, and shortly thereafter, did you
13 observe the fact that Dr. Evans -- well, some of his
14 patients were calling you to see about shipping their
15 drugs to them?

04:50:49

16 **A.** Yes.

17 **Q.** And specifically with regard to the State of
18 Louisiana, did you have a number of requests for drugs to
19 be shipped to you -- I'm sorry, drugs to be shipped by you
20 to the state of Louisiana?

04:51:03

21 **A.** Yes.

22 **Q.** Okay. Explain to the jury how that would work now,
23 according to your understanding, at least as far as
24 receiving a script on your end. Who -- how would you get
25 the script? You've already told us your conversation with

04:51:14

Direct-Devido/By Mr. Joubert

1 Rhoda?

2 **A.** An employee of Dr. Evans named Jason.

3 **Q.** Okay.

4 **A.** He brought in an envelope and he handed it to me and

04:51:27

5 he said these are the prescriptions for the people to

6 ship. And I asked him, have these people -- these

7 prescriptions of these people, have they been interviewed

8 on the telephone and he told me, yes.

9 **Q.** And was this conversation with Jason within a few

04:51:42

10 days, or weeks after your telephone conversation with

11 Rhoda?

12 **A.** I don't remember exactly.

13 **Q.** Right. But within a reasonable --

14 **A.** It was shortly after.

04:51:53

15 **Q.** Shortly after?

16 **A.** Yeah.

17 **Q.** And did Jason -- how often would Jason deliver

18 scripts to your pharmacy on average weekly basis? Was it

19 daily?

04:52:05

20 **A.** Monday through Friday.

21 **Q.** And how long did that continue?

22 **A.** Until I think July of '12.

23 **Q.** Now, within your pharmacy, who was the pharmacist,

24 the pharmacist who filled most of these prescriptions,

04:52:22

25 these controlled substance prescriptions for Dr. Evans?

Direct-Devido/By Mr. Joubert

1 **A.** Myself.

2 **Q.** You, yourself. In fact, you filled the majority of
3 them, didn't you?

4 **A.** Yes, sir.

04:52:29

5 **Q.** Now, how many other pharmacists did you have working
6 for you at the time.

7 **A.** Three.

8 **Q.** Is there any particular reason why you happened to be
9 the pharmacist who filled them?

04:52:38

10 **A.** Well, we were a very busy pharmacy. We filled for a
11 lot of prescriptions.

12 **Q.** Yes, sir.

13 **A.** And I wanted to make sure that when the prescriptions
14 came in, if it was the first time the patient was in I
15 went out to talk to them at least the first time.

04:52:52

16 **Q.** Well, we'll get to that a little later, but with
17 regard to the prescriptions being brought over by Jason,
18 was there any particular reason that you happened to fill
19 most of them?

04:53:05

20 **A.** I just decided that I would do it, to make sure that
21 the patient -- that I would get the prescriptions and I
22 would be able to talk to Jason to ask him the question,
23 have they been interviewed by the doctor on the phone.

04:53:25

24 **Q.** Now, it's not reasonable that you would have spoken
25 to Jason every day to ask him those questions, is it?

Direct-Devido/By Mr. Joubert

1 **A.** For about the first 6 to 10 times he came in, he came
2 in approximately 1:30 to 2:00 o'clock.

3 **Q.** Okay.

04:53:42

4 **A.** And I was available, so he asked for me. He saw me
5 and I saw him and went out and received the prescriptions
6 from him, and I asked him all those times, are these
7 patients been interviewed on the telephone? And he said
8 yes.

04:53:59

9 **Q.** And after the first 6 or 10 times, did there come a
10 time that Jason began to bring prescriptions over at a
11 different time other than at 1:30 or 2:00?

12 **A.** Yes, he started coming in later in the afternoon,
13 3:30, sometimes after 4:00 o'clock.

04:54:16

14 **Q.** Now, during the time that he began too bring
15 prescriptions over later in the afternoon, did you notice
16 an increase in the number of prescriptions that you were
17 receiving from Dr. Evans?

18 **A.** Yes.

04:54:28

19 **Q.** Do you have an understanding, or do you know why
20 there was an increase in the number of the prescriptions
21 that you began to receive around 3:30 or 4:00 from Jason?

04:54:50

22 **A.** Those were the patients that he -- when I was
23 informed that he wanted to save money, save the money not
24 to make, you know, three trips in three months. So they
25 would make just one trip and then the prescriptions would

Direct-Devido/By Mr. Joubert

1 be written ahead of time for them.

2 **Q.** All right. So are you telling the jury in so many
3 words that you think that these were examples of the --
4 well, the increase came about because of the number of
5 people who were receiving the three scripts in one office
6 visit every three months?

7 **A.** Yes. It was an increase in prescriptions and from
8 what I can remember we filled hundreds of prescriptions a
9 month for these patients from Louisiana.

10 **Q.** All right. Let me direct your attention now to a few
11 weeks or months later in 2011. We still -- let's say to
12 the spring of 2011, did you have another conversation with
13 Dr. Evans on the telephone?

14 **A.** Yes.

15 **Q.** Tell the jury what that was about.

16 **A.** He called me. He said he had a patient who was
17 having trouble with his high blood pressure and he didn't
18 know what the blood pressure medication was. And so, he
19 asked me what the medication was, and it was a brand name
20 blood pressure pill.

21 **Q.** Do you remember that name?

22 **A.** I'm not a hundred percent positive, but I think it
23 was Verelan.

24 **Q.** How do you spell that?

25 **A.** Verelan, V-E-R-E-L-A-N.

Direct-Devido/By Mr. Joubert

1 Q. And what was the nature of the question? Was it
2 simply about blood pressure or was it blood pressure in
3 conjunction with taking other medication?

04:56:33

4 A. No. It was just about the medication that the
5 patient was having trouble regulating his blood pressure.
6 So he wanted to know what it was.

7 Q. All right. Now, sometime thereafter in 2011, or
8 possibly even 2012, did you have another telephone
9 conversation with Dr. Evans?

04:56:53

10 A. Yes.

11 Q. And to the best of your knowledge, about when do you
12 think that was?

13 A. I believe it was early 2012, I don't remember.

14 Q. Tell the jury about that conversation.

04:57:06

15 A. It was another patient who was having blood pressure
16 problems.

17 Q. Okay. Was there any discussion about narcotic
18 prescriptions?

19 A. No, not that I can remember.

04:57:16

20 Q. Now, after that fourth conversation in early 2012
21 with Dr. Evans, did you have any other phone call
22 conversations with him?

23 A. I remember a couple more phone calls, but I do not
24 remember what we talked about.

04:57:36

25 Q. Would it be fair to say, that those other phone calls

Direct-Devido/By Mr. Joubert

1 were either not significant, or at least you don't recall
2 what they were?

3 **A.** I do not recall.

04:57:58

4 **Q.** Now, explain to the jury how would it work in your
5 office once you received the prescriptions from Jason to
6 be shipped to Louisiana? What would your pharmacy do, you
7 and your employees?

04:58:14

8 **A.** I would give them to my pharmacy technician to type
9 the prescription into the computer and they would generate
10 a prescription label.

11 **Q.** All right.

04:58:31

12 **A.** And then she would put them in a pile for me, one
13 after another, like if there were six of them, there would
14 be six prescription labels in the pile, and I would look
15 at them, take them, and go to the shelf with the oxycodone
16 if it was an oxycodone prescription, and fill the
17 prescription. And after I got all six of them filled, I
18 would then go to fill out the paper forms for Fed Ex
19 shipping.

04:58:51

20 **Q.** Okay.

04:59:06

21 **A.** And since we were so busy and I would get a lot of
22 phone calls and people would come to the counter want to
23 talk to me, my bookkeeper started -- volunteered to help
24 me do it and she then eventually started doing all of
25 them.

Direct-Devido/By Mr. Joubert

1 Q. Okay. Essentially your bookkeeper began to do all of
2 the shipping?

3 A. Yes.

04:59:15

4 Q. So about how many per day do you think you were
5 shipping on average or what was the maximum number you
6 recall?

7 A. The maximum number was about 10.

8 Q. Okay.

9 A. If I remember correctly.

04:59:23

10 Q. All right. Now, how would you obtain payment for the
11 drugs and I'm sure you obtained payment before they were
12 shipped; correct?

13 A. Some of the patients would call Dr. Evans' office and
14 ask if they've sent the prescriptions over to us. And
04:59:36 15 once they knew the prescriptions were sent to us, they
16 would call and give us a credit card, a few people, a few
17 patients ahead of time would mail a money order to us so
18 that when the prescription came in we had the money order
19 for payment and we could ship it that day.

04:59:57

20 Q. All right. And did that procedure work pretty well,
21 that is, getting the credit card information or money
22 orders?

23 A. Pretty well.

05:00:08

24 Q. And, of course, in some cases if the patient had not
25 called you, did you and your staff, in fact, call the

Direct-Devido/By Mr. Joubert

1 patient to obtain payment?

2 **A.** Yes.

3 **Q.** And you would ask for credit card information.

4 **A.** Credit card, yes.

05:00:19

5 **Q.** All right. Now, at that time, what was your
6 understanding with regard to being a pharmacist in Texas
7 shipping drugs to Louisiana. Did you understand?

8 **A.** Well, at that time, when I read the regulations in
9 the book that I could ship them I didn't think there was a
10 problem with it. I didn't find out until later.

05:00:41

11 **Q.** All right. Did there come a time in early 2012, when
12 you received a phone call from a patient of Dr. Evans?

13 THE COURT: Tell you what, let's break at this
14 point. It looks like you're shifting into a new subject
15 area.

05:01:11

16 MR. JOUBERT: Yes, Your Honor.

17 THE COURT: It's going to take more than 10 or
18 15 minutes, so let's break until tomorrow morning. We'll
19 pick it up at 9:00 o'clock. Y'all be careful out there.

05:01:22

20 Remember admonitions and don't block the freeway. I want
21 the lawyers and everybody to get here on time.

22 **(The following was held out of the presence of the jury)**

23 THE COURT: All right. You may step down, sir.
24 All right, gentlemen, lady, anything before we all break
25 for dinner?

05:01:56

1 MS. BOLEN: Nothing, Your Honor. Thank you.

2 MR. DAVIDSON: Judge, the only thing --

3 THE COURT: Come closer.

4 MR. DAVIDSON: This is kind of a conversation I

05:02:04

5 guess we have with the government to try to get of sense of

6 where they are in terms of their case so we can figure out

7 where we are in terms of...

8 THE COURT: Well, all they really have to tell

9 you is who the witnesses are going to be tomorrow.

05:02:14

10 MR. DAVIDSON: That's true.

11 THE COURT: And I know who one of them is going

12 to be. So what do you anticipate? Are you handling this

13 witness?

14 MR. DAVIDSON: No, Ms. Bolen.

05:02:25

15 THE COURT: Okay. So...

16 MR. JOUBERT: Judge, it's kind of hard to say.

17 We are hoping that we still could get 1 or 2 other patients

18 out of Louisiana.

19 THE COURT: I got them locked up. I'm just

05:02:40

20 kidding.

21 MR. JOUBERT: I'm sorry.

22 Who are not locked up?

23 THE COURT: Who are not locked up. There's

24 some trouble over there.

05:02:48

25 MR. JOUBERT: After Mr. DeVido, I think we

1 would have about three other witnesses, Judge.

2 THE COURT: Okay.

3 MR. JOUBERT: Including I told Mr. Davidson
4 earlier Osman Savillion.

05:03:00

5 THE COURT: Are these patients?

6 MR. JOUBERT: No, he was a former employee of
7 Dr. Evans.

8 THE COURT: Oh, that's right. I see.

9 MR. JOUBERT: The therapist. And after that --

05:03:10

10 THE COURT: Depends on whether you can get the
11 witnesses or not?

12 MR. JOUBERT: Yes. We'll still work on that.
13 But if we are unable to, we'll probably begin to call our
14 agents to begin their testimony.

05:03:24

15 THE COURT: All right. Okay. So that's it.
16 All right. Thank you very much. Looks like we'll probably
17 going to be here -- you're not going to be able to start
18 your case before Wednesday.

19 MR. DAVIDSON: Right.

05:03:35

20 THE COURT: All right. Have a good evening.

21 MR. JOUBERT: Thank you, Your Honor.

22 **(Recessed at 5:03 p.m.)**

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COURT REPORTER'S CERTIFICATE

I, Johnny C. Sanchez, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/
Johnny C. Sanchez, CRR, RMR

\$	13th ^[1] - 1264:6 14 ^[1] - 1109:8 142 ^[1] - 1070:9 15 ^[4] - 1033:19, 1113:17, 1266:17, 1292:18 150 ^[20] - 1062:9, 1064:19, 1065:22, 1066:5, 1068:7, 1068:8, 1069:5, 1069:16, 1072:13, 1073:1, 1073:25, 1077:1, 1098:5, 1098:7, 1098:9, 1250:17, 1250:18, 1250:21, 1250:22, 1251:10 15th ^[3] - 1104:9, 1105:8, 1105:16 16th ^[2] - 1063:20, 1064:25 17 ^[7] - 1033:19, 1033:21, 1037:13, 1063:18, 1138:25, 1159:21, 1246:2 170 ^[25] - 1046:10, 1068:7, 1179:21, 1203:2, 1204:4, 1210:21, 1243:13, 1243:16, 1243:21, 1244:9, 1244:11, 1244:12, 1244:23, 1244:24, 1244:25, 1245:1, 1245:3, 1245:22, 1246:4, 1246:5, 1246:8, 1246:10, 1246:11, 1251:21 17th ^[1] - 1079:23 18 ^[7] - 1037:13, 1091:18, 1107:25, 1109:15, 1138:25, 1159:21, 1246:2 180 ^[10] - 1064:19, 1065:21, 1066:5, 1068:8, 1069:5, 1069:16, 1073:1, 1098:5, 1098:9, 1250:21 18th ^[1] - 1066:15 19 ^[2] - 1064:25, 1110:5 1964 ^[2] - 1260:19, 1265:15 1969 ^[3] - 1266:22, 1266:23, 1266:24 1986 ^[1] - 1117:6 1990 ^[2] - 1116:25, 1118:5 1990s ^[1] - 1128:23 1992 ^[1] - 1267:9 1994 ^[1] - 1117:23 1995 ^[3] - 1117:23, 1119:5, 1119:11 1999 ^[2] - 1267:6, 1267:7 1:30 ^[2] - 1287:2, 1287:11 1:45 ^[1] - 1163:22 1st ^[7] - 1280:9, 1280:12, 1280:14, 1280:15, 1280:16, 1283:12, 1283:14	2009 ^[8] - 1060:15, 1075:19, 1261:11, 1270:16, 1270:18, 1270:20, 1270:23, 1271:13 2010 ^[20] - 1058:17, 1060:22, 1064:23, 1072:3, 1077:23, 1104:9, 1104:16, 1104:18, 1104:24, 1105:5, 1105:9, 1111:12, 1186:23, 1230:3, 1271:4, 1271:11, 1271:13, 1275:25, 1277:2 2011 ^[36] - 1063:13, 1063:20, 1064:25, 1066:3, 1066:15, 1068:17, 1069:15, 1071:11, 1071:15, 1072:4, 1073:19, 1075:21, 1076:9, 1076:17, 1078:12, 1079:23, 1080:6, 1098:10, 1119:5, 1119:11, 1119:12, 1119:13, 1119:18, 1144:22, 1145:1, 1179:23, 1187:9, 1189:14, 1218:4, 1230:3, 1277:12, 1277:25, 1284:12, 1288:11, 1288:12, 1289:7 2012 ^[25] - 1047:13, 1078:24, 1080:14, 1080:18, 1081:17, 1081:22, 1083:9, 1084:22, 1094:20, 1121:15, 1144:22, 1186:16, 1186:23, 1189:19, 1213:1, 1213:8, 1218:5, 1219:9, 1234:13, 1261:11, 1264:6, 1289:8, 1289:13, 1289:20, 1292:11 2013 ^[17] - 1057:19, 1121:15, 1186:19, 1186:22, 1187:1, 1187:2, 1187:16, 1189:21, 1190:24, 1192:1, 1193:19, 1194:5, 1195:6, 1213:1, 1237:9, 1238:2, 1238:4 2014 ^[3] - 1057:19, 1234:11, 1234:16 2015 ^[5] - 1194:11, 1194:14, 1220:10, 1260:19, 1266:1 21 ^[3] - 1066:15, 1141:9, 1255:21 210 ^[8] - 1072:13, 1073:2, 1073:25, 1076:15, 1077:1, 1098:7, 1181:4, 1251:16 22 ^[1] - 1068:18 226 ^[1] - 1074:7 22nd ^[1] - 1059:11 24 ^[1] - 1110:21 2417 ^[1] - 1059:22 25 ^[2] - 1114:16, 1114:21 250 ^[3] - 1250:15, 1250:17 26 ^[1] - 1071:15 29 ^[1] - 1079:13 2:00 ^[2] - 1287:2, 1287:11
'		3
'1 ^[1] - 1267:15 '11 ^[1] - 1121:15 '12 ^[3] - 1145:1, 1179:24, 1285:22 '82 ^[1] - 1269:4 '9 ^[2] - 1218:6, 1219:10 '90s ^[1] - 1128:24 '95 ^[1] - 1119:3 '98 ^[1] - 1218:6 '99 ^[1] - 1267:13 'lover' ^[1] - 1223:12		3 ^[1] - 1270:25 30 ^[17] - 1031:18, 1054:19, 1062:8, 1065:20, 1066:4, 1067:4, 1067:15, 1069:3, 1080:3, 1094:15, 1103:21, 1108:18, 1109:7, 1114:14, 1167:19, 1181:4, 1269:18 30-minute ^[1] - 1241:4 30-plus ^[1] - 1047:25 32 ^[1] - 1032:4 35 ^[2] - 1167:19, 1267:21 3:24 ^[1] - 1241:8 3:30 ^[3] - 1241:6, 1287:13, 1287:21
,		
/		
/s ^[1] - 1295:6		
0		
0 ^[3] - 1088:25, 1155:15, 1215:16 0063 ^[1] - 1109:7		
1	2	
1 ^[6] - 1156:16, 1156:23, 1163:8, 1206:11, 1215:17, 1293:17 1-11 ^[1] - 1229:22 10 ^[40] - 1088:25, 1091:23, 1104:18, 1143:18, 1143:20, 1143:25, 1155:9, 1155:15, 1155:18, 1155:20, 1155:21, 1156:16, 1156:22, 1156:23, 1162:18, 1164:24, 1164:25, 1165:4, 1165:5, 1186:6, 1200:23, 1201:1, 1206:11, 1215:16, 1215:17, 1215:19, 1287:1, 1287:9, 1291:7, 1292:17 10-plus ^[1] - 1168:20 1000 ^[1] - 1082:23 103 ^[2] - 1222:24 107 ^[1] - 1059:23 10:30 ^[1] - 1056:11 10:51 ^[1] - 1114:23 10th ^[4] - 1104:16, 1105:11, 1105:15, 1271:7 11:00 ^[2] - 1056:11, 1056:14 11:15 ^[2] - 1114:17, 1114:22 11th ^[2] - 1178:5, 1256:19 12 ^[2] - 1130:19, 1241:14 12-10 ^[1] - 1229:22 12-15-10 ^[1] - 1104:9 1268 ^[1] - 1030:1 12:31 ^[1] - 1164:2 13 ^[2] - 1077:21, 1259:21	2 ^[7] - 1044:11, 1067:5, 1076:13, 1200:23, 1201:1, 1270:25, 1293:17 2.0 ^[1] - 1159:10 20 ^[3] - 1031:17, 1114:21, 1130:6 20-minute ^[1] - 1113:17 2000 ^[5] - 1057:12, 1058:17, 1060:12, 1129:4, 1267:14 2000s ^[1] - 1129:2 2001 ^[7] - 1059:11, 1060:2, 1266:24, 1267:4, 1267:8, 1268:7, 1268:8 2001-4002-84401 ^[1] - 1059:13 2002 ^[1] - 1268:6 2007 ^[1] - 1123:10 2008 ^[11] - 1119:13, 1186:19, 1186:21, 1187:16, 1190:23, 1193:19, 1194:5, 1195:6, 1210:10, 1227:0, 1270:6	

3:50 [1] - 1241:7	9:30 [1] - 1056:6 9:35 [1] - 1056:19	accurately [1] - 1044:25 accused [1] - 1120:25 accusing [1] - 1050:10 achieved [1] - 1156:18 achievement [1] - 1156:6 achieving [7] - 1152:1, 1152:2, 1155:21, 1156:5, 1164:25, 1165:7, 1179:8 acknowledged [1] - 1204:22 acquire [1] - 1262:8 act [3] - 1149:24, 1183:22, 1233:7 Act [1] - 1219:22 acted [1] - 1101:1 acting [9] - 1224:21, 1224:25, 1225:2, 1225:11, 1225:18, 1225:19, 1225:21 action [4] - 1121:6, 1146:6, 1177:14, 1245:19 active [1] - 1245:17 activities [4] - 1065:4, 1087:20, 1136:21, 1173:2 activity [6] - 1066:22, 1066:24, 1067:3, 1067:22, 1119:17 acts [3] - 1121:3, 1183:22, 1219:21 actual [2] - 1054:1, 1234:15 acupuncture [1] - 1101:2 acute [1] - 1118:19 add [2] - 1093:24, 1225:10 ADD [1] - 1134:6 added [1] - 1159:12 addict [2] - 1063:10, 1131:3 addicted [1] - 1171:19 addiction [28] - 1121:14, 1121:21, 1130:14, 1130:15, 1130:17, 1130:25, 1137:2, 1137:3, 1137:7, 1149:4, 1152:17, 1152:25, 1153:11, 1171:17, 1171:23, 1171:25, 1172:12, 1189:17, 1190:2, 1190:3, 1190:5, 1190:9, 1218:1, 1218:4, 1220:1, 1248:16, 1248:19 addictionologist [1] - 1219:25 addition [1] - 1093:16 additional [8] - 1048:22, 1049:9, 1049:10, 1068:23, 1068:24, 1121:6, 1259:9, 1263:1 address [7] - 1116:13, 1225:10, 1246:5, 1269:1, 1269:3, 1269:10, 1273:12 addressed [3] - 1048:15, 1050:2, 1203:10 addresses [1] - 1051:10 addressing [1] - 1155:19 adequate [6] - 1137:18, 1139:6, 1139:9, 1182:13, 1226:18, 1243:18 adequately [2] - 1211:18, 1211:20 ADHD [1] - 1134:6 adjust [3] - 1093:22, 1148:4, 1254:4 adjusted [1] - 1239:7 adjustment [4] - 1164:12, 1231:2, 1247:3, 1250:24 adjustments [5] - 1239:12, 1240:3, 1240:5, 1247:4, 1250:11 Administration [2] - 1212:18, 1260:22
4	A	
4-11 [1] - 1229:3 40 [1] - 1269:18 43 [1] - 1141:9 45 [1] - 1133:21 49 [6] - 1032:16, 1032:18, 1032:25, 1035:20, 1044:11 4:00 [2] - 1287:13, 1287:21 4th [2] - 1071:15, 1073:19	a.m [2] - 1056:19, 1114:23 AA [2] - 1110:5, 1110:6 abandon [3] - 1238:25, 1248:4, 1248:14 abandoned [2] - 1043:13, 1220:24 abandoning [2] - 1045:18, 1051:11 abandonment [1] - 1239:2 abdominal [1] - 1200:3 aberrant [31] - 1133:18, 1135:12, 1136:11, 1136:13, 1136:14, 1136:17, 1136:18, 1136:19, 1136:24, 1137:11, 1146:5, 1146:6, 1147:4, 1148:15, 1152:10, 1152:14, 1166:3, 1172:12, 1179:1, 1231:17, 1231:23, 1231:25, 1232:4, 1232:6, 1232:7, 1232:8, 1232:9, 1232:11, 1233:8, 1233:10, 1233:21 abide [1] - 1251:19 ability [6] - 1064:13, 1125:17, 1172:20, 1199:13, 1237:14, 1279:25 able [20] - 1036:3, 1041:3, 1041:4, 1042:10, 1052:14, 1065:5, 1065:6, 1087:20, 1138:24, 1180:11, 1181:24, 1238:14, 1252:23, 1253:4, 1260:23, 1262:9, 1279:19, 1282:9, 1286:22, 1294:17 abnormal [1] - 1135:13 abnormalities [1] - 1168:16 above-entitled [1] - 1295:5 absence [2] - 1253:7, 1253:10 absent [1] - 1037:18 abuse [4] - 1129:3, 1160:15, 1165:17, 1166:3 abused [2] - 1160:19, 1166:4 abusers [1] - 1177:1 abusing [1] - 1274:22 Academy [3] - 1118:10, 1121:10, 1121:12 accept [5] - 1230:6, 1274:2, 1274:6, 1276:6, 1276:18 acceptable [1] - 1147:10 accepted [1] - 1277:7 accepts [1] - 1258:3 accident [5] - 1139:11, 1168:9, 1168:12, 1172:9, 1197:22 accidental [1] - 1181:9 accidentally [2] - 1154:3, 1177:15 accidents [3] - 1114:1, 1130:24, 1161:16 accomplish [1] - 1153:2 accomplishments [1] - 1115:19 according [7] - 1065:16, 1091:22, 1109:12, 1212:4, 1222:1, 1274:23, 1284:23 accuracy [1] - 1141:6 accurate [4] - 1140:3, 1141:10, 1142:14, 1257:14	
5		
5 [1] - 1106:12 5-11 [1] - 1229:3 50 [3] - 1035:20, 1039:11, 1103:19 500 [1] - 1036:18 53 [2] - 1108:17 5:03 [1] - 1294:22		
6		
6 [5] - 1165:5, 1215:19, 1266:24, 1287:1, 1287:9 6-11 [1] - 1229:3 60 [2] - 1104:7, 1153:14 60-percent [1] - 1267:25 62 [1] - 1104:7 6435 [1] - 1269:2		
7		
7 [1] - 1165:5 7-11 [1] - 1229:5		
8		
8 [2] - 1091:23, 1223:10 8-25-11 [1] - 1229:7 802(d)(3) [1] - 1271:22 841 [1] - 1258:1 843 [2] - 1256:10, 1256:19 843A3 [1] - 1255:21 85 [1] - 1169:12 87 [4] - 1030:1, 1268:9, 1268:16, 1268:21 8th [1] - 1069:15		
9		
9 [1] - 1106:23 90-day [1] - 1281:5 9122 [1] - 1223:3 95-CF-2106 [1] - 1058:15 98 [1] - 1070:9 9:00 [1] - 1292:19		

<p>Administrative [5] - 1179:21, 1243:13, 1244:9, 1245:2, 1251:22</p> <p>administrative [1] - 1124:9</p> <p>administrator [1] - 1050:11</p> <p>admission [1] - 1115:11</p> <p>admit [1] - 1060:3</p> <p>admitted [4] - 1030:1, 1147:2, 1268:20, 1268:21</p> <p>admonitions [1] - 1292:20</p> <p>advanced [1] - 1168:20</p> <p>adversely [1] - 1125:18</p> <p>adversity [3] - 1125:20, 1129:23, 1133:3</p> <p>advise [1] - 1202:15</p> <p>advised [1] - 1202:16</p> <p>advises [1] - 1120:5</p> <p>advisor [1] - 1120:11</p> <p>advisory [2] - 1119:19, 1122:6</p> <p>affect [1] - 1127:8</p> <p>affected [1] - 1125:18</p> <p>affecting [1] - 1064:13</p> <p>afford [4] - 1234:4, 1234:5, 1234:6, 1265:3</p> <p>afraid [1] - 1174:22</p> <p>afternoon [8] - 1057:3, 1185:20, 1253:19, 1253:20, 1254:12, 1254:13, 1287:12, 1287:15</p> <p>age [3] - 1133:21, 1167:22, 1276:5</p> <p>agencies [1] - 1191:19</p> <p>agency [1] - 1212:21</p> <p>agent [2] - 1082:11, 1238:7</p> <p>agents [7] - 1081:18, 1082:1, 1082:4, 1082:10, 1133:7, 1170:12, 1294:14</p> <p>AGIS [2] - 1195:23, 1195:25</p> <p>ago [10] - 1057:23, 1084:2, 1131:8, 1139:11, 1144:22, 1147:17, 1172:9, 1174:18, 1193:4</p> <p>agree [13] - 1034:3, 1041:12, 1063:8, 1064:16, 1068:6, 1209:5, 1247:1, 1257:13, 1257:17, 1257:19, 1258:13, 1258:23, 1258:25</p> <p>agreed [9] - 1246:13, 1256:25, 1257:1, 1257:5, 1257:9, 1257:25, 1258:16, 1261:10, 1264:3</p> <p>agreement [30] - 1219:17, 1219:20, 1221:6, 1221:16, 1221:17, 1222:12, 1224:10, 1255:11, 1255:16, 1255:25, 1256:10, 1256:14, 1256:15, 1256:23, 1257:1, 1257:2, 1258:3, 1258:14, 1258:24, 1258:25, 1259:7, 1259:14, 1259:17, 1259:21, 1260:8, 1261:6, 1264:3, 1264:11, 1264:13</p> <p>agreements [1] - 1257:23</p> <p>agrees [1] - 1258:8</p> <p>ahead [11] - 1051:6, 1072:3, 1113:7, 1115:22, 1163:21, 1178:19, 1241:3, 1242:23, 1280:8, 1288:1, 1291:17</p> <p>ain't [1] - 1178:9</p> <p>airline [2] - 1122:12, 1122:13</p> <p>airlines [2] - 1122:14, 1122:16</p> <p>alcohol [3] - 1110:22, 1158:8, 1223:17</p> <p>alcoholics [1] - 1110:8</p>	<p>alcoholism [1] - 1133:22</p> <p>algorithm [2] - 1233:25, 1234:2</p> <p>alleged [1] - 1161:24</p> <p>allegedly [1] - 1145:12</p> <p>Allen [1] - 1114:8</p> <p>allow [4] - 1091:10, 1095:15, 1154:4, 1265:22</p> <p>allows [2] - 1046:11, 1219:5</p> <p>alluded [1] - 1166:20</p> <p>almost [2] - 1169:18, 1206:8</p> <p>alone [4] - 1171:25, 1178:11, 1182:13, 1223:22</p> <p>alter [1] - 1157:16</p> <p>alternate [2] - 1095:6, 1163:11</p> <p>alternative [5] - 1152:6, 1153:24, 1171:13, 1171:14, 1182:13</p> <p>American [5] - 1118:7, 1118:10, 1121:12, 1163:13, 1191:22</p> <p>amount [11] - 1065:20, 1066:10, 1067:3, 1074:6, 1075:15, 1091:22, 1097:18, 1097:19, 1184:12, 1251:12, 1264:8</p> <p>amounts [1] - 1258:21</p> <p>analogous [1] - 1139:12</p> <p>analysis [7] - 1033:19, 1034:1, 1129:5, 1132:2, 1137:8, 1145:19, 1148:2</p> <p>anatomical [1] - 1127:3</p> <p>anesthesia [2] - 1117:16, 1117:18</p> <p>anesthesiologist [1] - 1123:16</p> <p>anesthesiology [1] - 1118:8</p> <p>angel [2] - 1058:3, 1060:3</p> <p>ankylosing [1] - 1162:6</p> <p>Anonymous [1] - 1110:8</p> <p>anonymous [1] - 1110:8</p> <p>answer [10] - 1040:15, 1072:20, 1079:16, 1083:14, 1084:4, 1106:23, 1107:2, 1109:12, 1111:10, 1138:14</p> <p>answered [9] - 1071:7, 1080:21, 1084:18, 1094:18, 1098:16, 1099:1, 1106:2, 1277:6, 1277:7</p> <p>answers [5] - 1048:9, 1081:3, 1081:8, 1082:17, 1277:8</p> <p>anticipate [3] - 1031:12, 1048:14, 1293:12</p> <p>anticipated [1] - 1126:5</p> <p>anticipating [1] - 1108:4</p> <p>antidepressant [1] - 1070:2</p> <p>anxiety [6] - 1094:9, 1133:24, 1166:9, 1171:5, 1176:1, 1210:9</p> <p>anyplace [1] - 1273:17</p> <p>anyway [1] - 1046:4</p> <p>Apartment [1] - 1059:23</p> <p>apologize [2] - 1054:7, 1054:10</p> <p>appear [1] - 1054:25</p> <p>appearance [1] - 1104:8</p> <p>appeared [7] - 1068:8, 1124:9, 1171:9, 1171:11, 1180:6, 1201:8, 1248:7</p> <p>appearing [3] - 1255:1, 1255:10, 1255:13</p> <p>applicable [1] - 1259:1</p> <p>apply [1] - 1128:17</p> <p>applying [1] - 1193:2</p>	<p>appointment [3] - 1196:10, 1196:13, 1198:10</p> <p>approach [13] - 1040:22, 1071:18, 1082:19, 1113:2, 1132:10, 1147:9, 1155:12, 1174:14, 1177:19, 1222:17, 1222:19, 1241:10, 1262:15</p> <p>approached [2] - 1081:18, 1192:11</p> <p>approaches [1] - 1206:19</p> <p>appropriate [6] - 1031:6, 1036:25, 1040:21, 1054:5, 1054:25, 1257:16</p> <p>appropriately [3] - 1041:1, 1052:15, 1053:9</p> <p>approves [1] - 1212:21</p> <p>arbiter [4] - 1120:20, 1120:21, 1120:23, 1120:24</p> <p>area [14] - 1034:13, 1055:4, 1058:2, 1059:1, 1071:20, 1097:21, 1130:22, 1149:7, 1149:16, 1165:5, 1187:1, 1189:21, 1252:24, 1292:15</p> <p>areas [7] - 1052:2, 1061:9, 1061:10, 1089:24, 1097:1, 1161:3, 1178:22</p> <p>argument [7] - 1073:21, 1074:1, 1098:20, 1250:23, 1250:25, 1251:9, 1251:13</p> <p>arguments [4] - 1098:20, 1098:22, 1099:8, 1108:10</p> <p>arm [1] - 1167:5</p> <p>arose [1] - 1093:22</p> <p>arrangements [1] - 1142:19</p> <p>array [1] - 1171:23</p> <p>arrested [1] - 1109:16</p> <p>arrived [1] - 1044:15</p> <p>Arthur [1] - 1255:2</p> <p>article [3] - 1234:13, 1234:15, 1234:20</p> <p>as-needed-basis [1] - 1093:25</p> <p>aspects [3] - 1047:12, 1049:21, 1094:10</p> <p>assess [5] - 1126:16, 1126:17, 1172:3, 1172:24, 1179:9</p> <p>assessed [1] - 1184:14</p> <p>assesses [1] - 1211:13</p> <p>assessing [5] - 1100:12, 1126:20, 1135:2, 1170:19, 1177:11</p> <p>assessment [9] - 1052:12, 1117:17, 1130:3, 1142:25, 1145:18, 1170:25, 1172:21, 1179:18, 1183:17</p> <p>assistance [6] - 1075:10, 1075:15, 1075:23, 1076:10, 1076:22, 1259:11</p> <p>assistant [1] - 1282:20</p> <p>associate [1] - 1042:2</p> <p>associated [10] - 1034:2, 1036:21, 1042:3, 1075:14, 1076:11, 1138:7, 1158:12, 1158:13, 1178:25, 1217:22</p> <p>Association [1] - 1191:22</p> <p>assume [1] - 1220:7</p> <p>assumed [4] - 1062:2, 1067:13, 1102:9, 1102:11</p> <p>assuming [6] - 1045:13, 1047:10, 1132:8, 1147:11, 1150:4, 1153:22</p> <p>attempt [1] - 1053:20</p> <p>attempting [1] - 1053:23</p> <p>attend [1] - 1257:9</p>
---	---	---

<p>attended [2] - 1110:5, 1110:16 attention [12] - 1034:6, 1047:1, 1134:1, 1165:4, 1165:20, 1169:10, 1179:20, 1248:25, 1250:13, 1270:6, 1288:10 attorney [1] - 1121:2 Audie [5] - 1215:8, 1239:19, 1239:21, 1246:25, 1247:5 August [11] - 1068:17, 1069:15, 1070:9, 1071:6, 1071:11, 1080:6, 1081:17, 1187:8, 1280:12, 1280:15, 1283:14 Augusta [5] - 1060:22, 1104:16, 1104:23, 1273:18 aunt [1] - 1265:2 Austin [1] - 1252:24 authored [2] - 1123:1, 1123:3 autoimmune [2] - 1074:21, 1210:14 automobile [2] - 1161:16, 1172:9 available [2] - 1092:14, 1287:4 Avenue [1] - 1114:5 average [5] - 1108:8, 1133:16, 1182:24, 1285:18, 1291:5 aviation [2] - 1122:11, 1122:15 avoidance [1] - 1174:22 aware [19] - 1062:16, 1075:7, 1076:19, 1076:20, 1189:22, 1197:19, 1197:22, 1202:12, 1202:16, 1205:14, 1220:13, 1220:20, 1221:21, 1221:24, 1223:17, 1223:20, 1237:18, 1237:20, 1249:1 awhile [1] - 1102:24</p> <p style="text-align: center;">B</p>	<p>1170:4, 1183:19 basis [16] - 1034:21, 1054:24, 1072:12, 1072:20, 1072:21, 1078:23, 1087:21, 1093:25, 1095:21, 1169:8, 1198:17, 1202:14, 1251:15, 1260:13, 1263:12, 1285:18 Bates [5] - 1104:7, 1108:17, 1109:7, 1223:3 Baton [1] - 1055:22 battle [1] - 1035:4 bear [1] - 1037:15 became [3] - 1119:15, 1119:17, 1265:16 become [4] - 1119:13, 1119:18, 1126:4, 1130:7 becomes [2] - 1037:21, 1037:24 becoming [1] - 1135:9 beg [1] - 1118:1 began [5] - 1275:19, 1287:10, 1287:14, 1287:21, 1291:1 begin [4] - 1151:4, 1270:17, 1294:13, 1294:14 beginning [4] - 1151:3, 1211:13, 1228:23, 1239:13 begs [1] - 1101:1 behavior [19] - 1129:20, 1133:17, 1136:11, 1136:13, 1136:18, 1136:25, 1137:11, 1147:4, 1147:10, 1148:16, 1152:10, 1152:15, 1166:4, 1179:1, 1232:12, 1233:8, 1233:10, 1233:21 behavioral [10] - 1129:18, 1129:21, 1130:4, 1130:7, 1132:17, 1133:12, 1156:1, 1170:10, 1171:22, 1176:22 behaviors [7] - 1135:12, 1154:3, 1231:17, 1231:23, 1231:25, 1232:4, 1232:6 behaviorial [1] - 1132:13 behind [1] - 1041:22 below [3] - 1245:21, 1246:3, 1246:5 bench [2] - 1031:6, 1071:18 benchmarks [1] - 1179:5 benefit [28] - 1034:2, 1135:16, 1135:17, 1135:21, 1135:22, 1136:3, 1145:23, 1145:24, 1145:25, 1147:11, 1150:2, 1152:1, 1152:2, 1155:21, 1156:7, 1156:10, 1156:18, 1156:24, 1165:1, 1165:8, 1179:8, 1181:11, 1182:1, 1246:22, 1251:4, 1251:6, 1251:14 benefit" [1] - 1156:5 benefited [1] - 1182:1 benefits [5] - 1062:15, 1184:23, 1222:8, 1235:24 Bentyl [1] - 1154:6 benzodiazapine [5] - 1158:2, 1158:6, 1158:7, 1158:18, 1159:3 best [16] - 1047:6, 1050:13, 1056:15, 1058:12, 1064:5, 1123:2, 1168:1, 1169:14, 1172:2, 1172:3, 1207:7, 1214:11, 1224:5, 1232:16, 1240:12, 1289:11 bet [2] - 1124:20, 1125:6</p>	<p>1069:2, 1087:4, 1088:23, 1095:15, 1122:4, 1125:7, 1138:19, 1151:22, 1156:11, 1165:6, 1201:23, 1202:5, 1254:17 between [14] - 1035:5, 1050:18, 1052:21, 1128:6, 1142:12, 1170:1, 1171:1, 1193:24, 1205:5, 1218:4, 1239:8, 1244:8, 1261:11, 1266:24 beyond [4] - 1073:25, 1078:12, 1186:1 big [5] - 1085:25, 1101:1, 1104:25, 1124:19, 1125:12 bills [2] - 1097:14, 1268:1 binds [1] - 1257:2 bipolar [3] - 1134:1, 1148:14, 1148:18 birthday [1] - 1265:23 bit [22] - 1043:18, 1047:3, 1060:8, 1065:3, 1097:13, 1118:2, 1139:8, 1150:3, 1150:25, 1164:14, 1166:18, 1168:20, 1169:3, 1170:21, 1170:23, 1171:16, 1193:4, 1195:7, 1200:2, 1224:1, 1232:3, 1256:13 bladder [1] - 1138:8 blend [1] - 1197:9 blind [1] - 1262:3 blindness [6] - 1044:11, 1045:2, 1045:5, 1045:10, 1045:20 block [1] - 1292:20 blocking [1] - 1175:5 blood [30] - 1070:6, 1070:7, 1070:8, 1070:14, 1070:17, 1070:24, 1070:25, 1081:16, 1088:9, 1088:10, 1135:18, 1135:19, 1135:20, 1135:22, 1198:25, 1199:4, 1199:8, 1210:10, 1245:18, 1245:24, 1246:2, 1252:2, 1252:3, 1288:17, 1288:18, 1288:20, 1289:2, 1289:5, 1289:15 Blue [1] - 1219:7 blunt [1] - 1161:18 Board [34] - 1046:24, 1118:7, 1123:25, 1124:5, 1124:7, 1187:7, 1187:16, 1192:6, 1193:6, 1193:10, 1194:4, 1202:22, 1203:5, 1207:18, 1208:1, 1208:4, 1208:6, 1209:22, 1210:16, 1211:17, 1211:21, 1212:4, 1213:19, 1213:21, 1221:7, 1225:19, 1226:11, 1228:2, 1230:24, 1234:8, 1235:1, 1240:17, 1251:20 board [20] - 1094:22, 1094:25, 1095:4, 1095:10, 1095:17, 1096:6, 1100:19, 1100:22, 1100:24, 1101:1, 1101:8, 1101:9, 1118:6, 1119:19, 1120:11, 1122:6, 1214:2, 1220:5, 1220:9, 1228:3 boards [1] - 1095:1 Bob [1] - 1052:9 body [6] - 1127:8, 1142:16, 1174:5, 1213:13, 1218:22, 1227:12 bogged [2] - 1037:7, 1038:17 Bolen [11] - 1044:24, 1243:7, 1243:10, 1244:7, 1245:5, 1245:11, 1246:11, 1248:2, 1248:24, 1250:10, 1293:14 BOLEN [58] - 1032:16, 1032:19, 1034:16, 1035:18, 1043:1, 1043:6, 1043:13, 1043:22, 1044:2, 1044:5,</p>
---	--	---

<p>1044:8, 1044:13, 1045:24, 1046:2, 1046:6, 1046:8, 1051:9, 1051:15, 1051:22, 1052:8, 1052:17, 1052:19, 1052:23, 1053:2, 1053:11, 1053:21, 1053:24, 1054:6, 1054:11, 1054:13, 1054:17, 1054:19, 1054:21, 1055:7, 1072:3, 1114:2, 1115:13, 1177:17, 1178:4, 1185:17, 1185:19, 1188:11, 1188:14, 1194:17, 1222:14, 1222:17, 1222:21, 1222:24, 1223:2, 1240:9, 1240:10, 1241:1, 1242:14, 1262:13, 1262:24, 1263:1, 1268:18, 1293:1</p> <p>bolts [1] - 1212:3</p> <p>bona [1] - 1196:6</p> <p>book [6] - 1035:7, 1035:8, 1278:8, 1278:13, 1292:9</p> <p>bookkeeper [2] - 1290:23, 1291:1</p> <p>books [1] - 1035:24</p> <p>bored [1] - 1106:20</p> <p>born [2] - 1264:17, 1264:18</p> <p>bottle [1] - 1243:4</p> <p>bottom [7] - 1032:12, 1078:6, 1101:8, 1104:8, 1280:6, 1280:10, 1280:14</p> <p>bought [3] - 1267:4, 1267:13, 1268:4</p> <p>bounds [1] - 1194:1</p> <p>Bourke [1] - 1049:9</p> <p>bowel [1] - 1138:8</p> <p>box [1] - 1279:11</p> <p>bracketed [1] - 1044:10</p> <p>brain [3] - 1119:25, 1133:6, 1158:8</p> <p>brand [1] - 1288:19</p> <p>breached [1] - 1263:8</p> <p>break [15] - 1056:4, 1113:7, 1113:8, 1113:13, 1113:16, 1113:17, 1114:12, 1164:15, 1164:22, 1241:2, 1241:4, 1292:13, 1292:18, 1292:24</p> <p>Brenda [8] - 1067:7, 1091:15, 1092:3, 1103:11, 1103:12, 1106:15, 1106:16</p> <p>Briar [1] - 1086:3</p> <p>Briargrove [7] - 1267:1, 1267:2, 1268:11, 1268:25, 1269:1, 1269:24, 1270:7</p> <p>brief [5] - 1061:21, 1092:23, 1095:23, 1095:24, 1220:23</p> <p>briefly [4] - 1106:15, 1160:22, 1174:18, 1178:22</p> <p>bring [8] - 1109:2, 1166:11, 1279:7, 1279:14, 1284:10, 1287:10, 1287:14</p> <p>bringing [1] - 1034:6</p> <p>broke [1] - 1097:14</p> <p>brought [8] - 1036:1, 1048:22, 1248:24, 1260:3, 1274:7, 1274:9, 1285:4, 1286:17</p> <p>BS [1] - 1265:15</p> <p>bubble [1] - 1079:15</p> <p>builds [1] - 1201:20</p> <p>bulges [1] - 1167:25</p> <p>bulging [3] - 1167:9, 1167:16, 1167:19</p> <p>bulk [1] - 1035:12</p> <p>bullet [2] - 1044:9, 1044:11</p> <p>bunch [1] - 1082:16</p> <p>burning [1] - 1206:3</p>	<p>business [4] - 1099:14, 1184:13, 1251:14, 1267:24</p> <p>busy [2] - 1286:10, 1290:21</p> <p>but.. [1] - 1063:11</p> <p>buy [3] - 1125:2, 1267:17, 1268:3</p> <p>BY [37] - 1057:7, 1059:10, 1059:19, 1063:17, 1068:5, 1069:12, 1071:9, 1073:18, 1076:7, 1083:1, 1084:20, 1094:19, 1096:23, 1098:18, 1099:3, 1103:23, 1104:5, 1105:4, 1106:3, 1108:15, 1111:9, 1116:3, 1164:21, 1178:20, 1180:3, 1185:19, 1188:14, 1194:17, 1223:2, 1240:10, 1243:2, 1250:20, 1254:11, 1260:5, 1264:1, 1268:23, 1272:7</p>	<p>1043:4, 1050:18, 1053:6, 1054:25, 1057:11, 1057:12, 1057:14, 1057:21, 1058:18, 1113:19, 1132:5, 1146:4, 1169:14, 1173:19, 1185:23, 1188:1, 1188:4, 1193:23, 1211:25, 1241:18, 1248:12, 1251:20, 1253:4, 1253:6, 1255:8, 1261:2, 1293:6, 1294:18</p> <p>cases [13] - 1043:10, 1046:11, 1150:15, 1151:17, 1177:11, 1181:6, 1197:20, 1204:11, 1214:15, 1220:17, 1227:3, 1247:1, 1291:24</p> <p>cash [5] - 1184:13, 1184:17, 1184:18, 1264:9, 1264:10</p> <p>catastrophic [1] - 1119:24</p> <p>catastrophizing [1] - 1174:25</p> <p>catch [1] - 1137:9</p> <p>catching [1] - 1213:6</p> <p>categories [3] - 1170:3, 1170:4, 1174:22</p> <p>category [3] - 1065:6, 1080:21, 1080:22</p> <p>caused [7] - 1063:8, 1162:4, 1162:5, 1162:7, 1162:8, 1174:4, 1213:12</p> <p>causes [1] - 1161:7</p> <p>causing [4] - 1090:11, 1090:21, 1148:18, 1169:21</p> <p>cautioned [2] - 1115:25, 1254:8</p> <p>cautious [2] - 1169:16, 1191:4</p> <p>caveats [1] - 1200:22</p> <p>CDC [1] - 1191:24</p> <p>ceiling [1] - 1191:1</p> <p>Celexa [6] - 1069:22, 1069:25, 1070:2, 1093:24, 1094:1, 1094:8</p> <p>center [1] - 1166:7</p> <p>Center [2] - 1117:10, 1117:23</p> <p>certain [21] - 1036:1, 1036:10, 1039:20, 1049:10, 1053:15, 1099:16, 1133:7, 1190:25, 1193:6, 1193:7, 1200:22, 1204:7, 1231:20, 1233:18, 1233:21, 1234:3, 1238:14, 1239:13, 1258:10, 1261:7, 1276:16</p> <p>certainly [13] - 1035:8, 1041:24, 1051:8, 1063:16, 1073:13, 1174:13, 1175:10, 1176:20, 1204:15, 1217:4, 1220:13, 1224:11, 1239:12</p> <p>CERTIFICATE [1] - 1295:1</p> <p>certification [3] - 1103:13, 1118:15, 1118:16</p> <p>certifications [2] - 1118:6, 1118:9</p> <p>Certified [1] - 1118:7</p> <p>certified [3] - 1118:18, 1118:20, 1118:24</p> <p>certify [1] - 1295:3</p> <p>cervical [5] - 1089:23, 1089:24, 1090:4, 1090:10, 1132:14</p> <p>cetera [3] - 1038:13, 1107:11, 1184:5</p> <p>chain [2] - 1267:18, 1267:23</p> <p>chair [3] - 1096:6, 1101:7, 1101:8</p> <p>challenge [1] - 1034:10</p> <p>challenged [1] - 1034:10</p> <p>challenging [1] - 1262:22</p> <p>chance [2] - 1055:2, 1186:10</p>
C		
<p>C2 [4] - 1280:2, 1281:1, 1282:5, 1283:23</p> <p>Cadillac [1] - 1218:11</p> <p>calm [1] - 1231:10</p> <p>Calvin [5] - 1149:11, 1229:1, 1246:12, 1247:20, 1249:18</p> <p>Campbell [1] - 1085:17</p> <p>cancer [16] - 1060:9, 1060:12, 1075:19, 1077:5, 1077:8, 1077:10, 1077:16, 1077:19, 1078:9, 1174:2, 1174:3, 1174:4, 1174:5, 1174:8, 1174:14, 1174:15</p> <p>candid [1] - 1153:20</p> <p>candidate [1] - 1163:16</p> <p>candor [1] - 1144:17</p> <p>cane [1] - 1213:15</p> <p>canes [1] - 1214:10</p> <p>cannot [6] - 1038:17, 1045:4, 1053:8, 1147:12, 1167:24, 1282:10</p> <p>capacities [1] - 1190:7</p> <p>capacity [1] - 1121:16</p> <p>car [3] - 1139:11, 1168:9, 1168:12</p> <p>card [4] - 1291:16, 1291:21, 1292:3, 1292:4</p> <p>care [60] - 1042:6, 1045:18, 1051:14, 1051:16, 1064:14, 1089:9, 1089:11, 1120:25, 1128:12, 1128:13, 1128:14, 1128:19, 1128:22, 1144:15, 1144:19, 1144:25, 1145:2, 1145:4, 1153:1, 1153:3, 1153:7, 1153:9, 1153:17, 1154:10, 1154:11, 1157:1, 1157:20, 1181:21, 1183:9, 1184:15, 1191:13, 1193:3, 1193:5, 1193:13, 1193:22, 1193:24, 1199:9, 1203:2, 1205:6, 1210:9, 1211:23, 1211:25, 1218:2, 1220:21, 1226:13, 1234:9, 1234:21, 1240:14, 1240:23, 1243:12, 1243:20, 1243:21, 1244:8, 1244:21, 1246:5, 1246:9, 1246:20, 1251:1, 1251:2</p> <p>careful [4] - 1043:7, 1043:17, 1168:18, 1292:19</p> <p>caregiver [1] - 1198:20</p> <p>carry [1] - 1048:4</p> <p>case [31] - 1031:14, 1033:23, 1036:14,</p>	<p><i>Johnny C. Sanchez, RMR, CRR - jcsreporter@aol.com</i></p>	

<p>change [16] - 1092:25, 1093:2, 1093:4, 1128:19, 1136:1, 1156:14, 1165:9, 1165:11, 1187:2, 1187:5, 1187:8, 1187:11, 1192:4, 1192:5, 1194:14, 1250:25</p> <p>changed [6] - 1179:10, 1187:7, 1187:12, 1187:21, 1213:1, 1267:22</p> <p>changes [8] - 1047:17, 1047:21, 1047:22, 1076:14, 1186:25, 1221:25, 1236:11, 1236:24</p> <p>changing [2] - 1213:5, 1225:9</p> <p>Chapter [5] - 1046:10, 1179:21, 1243:13, 1244:9, 1244:11</p> <p>charge [9] - 1058:11, 1255:18, 1255:24, 1256:10, 1256:18, 1258:1, 1270:11, 1270:15</p> <p>charged [2] - 1039:9, 1255:5</p> <p>charges [4] - 1059:7, 1255:6, 1256:3, 1257:17</p> <p>Chart [1] - 1063:18</p> <p>chart [38] - 1047:18, 1061:23, 1064:17, 1072:20, 1072:21, 1073:19, 1086:21, 1086:22, 1089:8, 1090:7, 1092:15, 1092:17, 1092:21, 1092:22, 1093:6, 1100:13, 1104:6, 1108:18, 1139:16, 1148:20, 1154:23, 1155:7, 1157:13, 1157:15, 1171:12, 1188:21, 1196:19, 1196:21, 1198:9, 1204:19, 1205:16, 1207:17, 1208:15, 1209:6, 1229:20, 1231:3, 1250:13</p> <p>charts [60] - 1047:16, 1094:18, 1100:3, 1100:5, 1100:16, 1103:15, 1103:16, 1139:2, 1139:5, 1139:16, 1140:18, 1140:22, 1141:1, 1141:3, 1141:13, 1142:25, 1144:9, 1147:18, 1159:21, 1165:15, 1166:13, 1167:15, 1171:8, 1180:5, 1180:24, 1183:17, 1185:22, 1185:25, 1186:3, 1186:5, 1186:12, 1186:13, 1186:15, 1186:18, 1186:21, 1188:16, 1192:21, 1194:18, 1197:11, 1197:13, 1197:16, 1198:6, 1207:11, 1216:11, 1221:13, 1223:4, 1226:25, 1228:15, 1230:12, 1231:6, 1235:17, 1236:13, 1236:16, 1237:18, 1237:20, 1237:21, 1239:11, 1240:6, 1247:23, 1250:12</p> <p>check [4] - 1113:5, 1113:10, 1113:14, 1274:20</p> <p>checked [3] - 1061:18, 1085:16, 1088:11</p> <p>checking [2] - 1091:24, 1093:16</p> <p>checks [1] - 1264:9</p> <p>chemical [1] - 1133:6</p> <p>chemically [2] - 1128:1, 1176:23</p> <p>chemist [2] - 1127:25, 1128:4</p> <p>chemistry [5] - 1117:8, 1266:4, 1266:6, 1266:10, 1266:11</p> <p>chemotherapy [10] - 1075:13, 1075:14, 1075:22, 1076:10, 1076:11, 1076:15, 1076:21, 1077:9, 1077:13, 1078:21</p> <p>Chicago [6] - 1057:11, 1057:14, 1057:15, 1057:21, 1058:2, 1059:1</p>	<p>chicken [1] - 1174:25</p> <p>chief [1] - 1270:11</p> <p>child [2] - 1064:14, 1089:9</p> <p>choice [2] - 1152:25, 1153:10</p> <p>chosen [1] - 1054:5</p> <p>chronic [12] - 1067:20, 1118:19, 1128:25, 1173:6, 1173:7, 1174:10, 1174:13, 1174:16, 1174:19, 1174:21, 1177:2, 1214:20</p> <p>chronological [1] - 1231:10</p> <p>church [1] - 1211:5</p> <p>Cicero [1] - 1059:23</p> <p>circumstance [2] - 1128:15, 1251:1</p> <p>circumstances [2] - 1147:7, 1165:22</p> <p>civil [2] - 1043:8, 1046:15</p> <p>claim [1] - 1264:4</p> <p>claiming [1] - 1076:20</p> <p>class [2] - 1122:14, 1122:17</p> <p>Clayton [4] - 1067:7, 1103:11, 1103:12</p> <p>clean [1] - 1062:23</p> <p>clear [12] - 1132:21, 1140:19, 1141:18, 1141:21, 1156:21, 1168:14, 1178:24, 1181:11, 1209:2, 1234:20, 1244:7, 1245:12</p> <p>clearly [1] - 1150:4</p> <p>client [1] - 1054:8</p> <p>clinic [4] - 1119:4, 1182:24, 1273:3, 1273:4</p> <p>clinical [12] - 1052:10, 1052:17, 1052:21, 1052:23, 1052:25, 1053:3, 1053:7, 1053:11, 1053:16, 1145:22, 1195:1, 1195:14</p> <p>clinically [2] - 1182:16, 1184:22</p> <p>clock [2] - 1091:22, 1225:4</p> <p>Clonidine [1] - 1154:6</p> <p>close [9] - 1041:6, 1044:8, 1101:15, 1178:15, 1179:19, 1228:22, 1254:14, 1268:5, 1269:9</p> <p>closed [1] - 1273:4</p> <p>closer [2] - 1031:7, 1293:3</p> <p>clotting [1] - 1210:10</p> <p>co [1] - 1271:23</p> <p>co-conspirator [1] - 1271:23</p> <p>coat [1] - 1046:17</p> <p>cocktail [10] - 1159:4, 1159:5, 1159:6, 1159:9, 1159:11, 1159:15, 1160:7, 1160:10, 1160:14, 1160:19</p> <p>Code [6] - 1179:21, 1243:13, 1244:9, 1245:2, 1251:22, 1255:22</p> <p>coexisting [1] - 1210:2</p> <p>cognitive [12] - 1129:18, 1129:20, 1129:21, 1130:4, 1130:7, 1132:13, 1132:17, 1133:12, 1156:1, 1170:10, 1175:13, 1175:19</p> <p>cognitively [1] - 1129:22</p> <p>coincidentally [1] - 1167:13</p> <p>collectively [1] - 1050:17</p> <p>College [1] - 1163:13</p> <p>collision [1] - 1052:21</p> <p>combination [4] - 1159:16, 1159:23, 1160:8, 1223:22</p> <p>combined [1] - 1170:17</p>	<p>comfortable [2] - 1164:8, 1168:21</p> <p>coming [12] - 1043:25, 1046:13, 1052:9, 1054:3, 1114:3, 1169:8, 1169:16, 1178:9, 1207:24, 1232:14, 1271:9, 1287:12</p> <p>COMM [8] - 1079:7, 1079:25, 1080:7, 1111:24, 1147:21</p> <p>comment [3] - 1044:16, 1162:23, 1260:16</p> <p>commented [1] - 1205:11</p> <p>comments [1] - 1181:17</p> <p>commercial [2] - 1122:15, 1122:16</p> <p>commit [1] - 1177:7</p> <p>common [6] - 1120:6, 1144:6, 1167:9, 1167:21, 1174:20, 1228:24</p> <p>commonly [3] - 1168:3, 1169:21, 1224:14</p> <p>community [2] - 1191:8, 1225:23</p> <p>comorbidities [3] - 1177:5, 1177:6, 1177:7</p> <p>Comp [2] - 1120:20, 1197:20</p> <p>companies [1] - 1220:17</p> <p>compare [3] - 1134:12, 1134:15, 1243:10</p> <p>compared [1] - 1128:23</p> <p>comparing [1] - 1134:20</p> <p>comparison [1] - 1281:5</p> <p>compensate [1] - 1068:2</p> <p>Compensation [1] - 1120:14</p> <p>complain [2] - 1078:13, 1137:25</p> <p>complaining [1] - 1152:22</p> <p>complaint [1] - 1188:17</p> <p>complaints [2] - 1078:7, 1093:25</p> <p>complete [2] - 1063:22, 1257:13</p> <p>completed [2] - 1057:13, 1080:18</p> <p>completely [3] - 1046:17, 1194:1, 1245:6</p> <p>completing [2] - 1079:25, 1080:11</p> <p>complex [1] - 1176:3</p> <p>complexities [1] - 1217:22</p> <p>complicated [1] - 1218:2</p> <p>comply [2] - 1211:16, 1283:22</p> <p>component [9] - 1051:10, 1054:1, 1127:23, 1130:2, 1170:22, 1172:19, 1176:5, 1196:24</p> <p>components [2] - 1196:21, 1204:8</p> <p>compounding [1] - 1163:4</p> <p>comprehensive [1] - 1244:2</p> <p>compressed [1] - 1167:5</p> <p>compression [1] - 1145:16</p> <p>compulsive [2] - 1133:25</p> <p>computer [1] - 1290:9</p> <p>con [1] - 1137:17</p> <p>concentration [1] - 1156:19</p> <p>concept [3] - 1160:14, 1172:1, 1176:4</p> <p>concern [5] - 1042:8, 1042:19, 1043:3, 1171:10, 1181:8</p> <p>concerned [10] - 1041:19, 1043:9, 1043:18, 1043:22, 1050:8, 1055:3, 1070:6, 1071:25, 1172:23, 1174:12</p> <p>concerning [7] - 1035:1, 1039:17, 1099:5, 1123:1, 1123:10, 1123:16,</p>
--	---	---

<p>1259:22 concerns [1] - 1043:16 conclude [4] - 1045:9, 1185:3, 1185:7, 1278:11 concluded [2] - 1037:5, 1278:12 conclusion [6] - 1032:7, 1035:15, 1040:6, 1088:9, 1179:17, 1183:6 conclusions [1] - 1035:21 condition [3] - 1169:23, 1182:17, 1227:15 conditions [4] - 1118:19, 1163:2, 1172:22, 1210:2 conduct [10] - 1142:4, 1142:7, 1142:14, 1144:1, 1151:10, 1152:20, 1252:2, 1258:15, 1274:15, 1276:13 conducted [4] - 1141:15, 1141:23, 1142:21, 1151:12 conducting [1] - 1141:25 conferences [1] - 1257:10 confirm [2] - 1140:3, 1234:3 confirmation [4] - 1139:18, 1139:20, 1194:24, 1195:1 conflicting [1] - 1060:8 confused [1] - 1146:17 conjunction [2] - 1158:9, 1289:3 connection [5] - 1053:4, 1053:13, 1178:4, 1185:23, 1199:21 consent [8] - 1221:5, 1222:6, 1222:13, 1223:8, 1223:19, 1223:23, 1224:1, 1235:24 conservative [10] - 1129:9, 1131:14, 1131:16, 1131:19, 1133:14, 1184:21, 1190:13, 1226:1, 1226:8, 1233:16 conservatively [1] - 1132:11 consider [5] - 1132:13, 1133:21, 1163:4, 1176:20, 1187:18 consideration [7] - 1121:24, 1134:24, 1135:24, 1136:2, 1162:19, 1244:23, 1276:17 considered [6] - 1137:10, 1149:22, 1154:10, 1159:9, 1168:24, 1173:8 consistent [5] - 1090:16, 1143:12, 1144:14, 1156:16, 1248:11 consistently [4] - 1155:8, 1159:22, 1162:18, 1180:14 conspiracy [1] - 1255:6 conspirator [1] - 1271:23 constantly [1] - 1155:20 constitute [1] - 1159:1 constitutes [1] - 1044:23 consult [3] - 1132:15, 1162:21 consultant [1] - 1181:22 consultation [1] - 1132:9 consultations [3] - 1131:25, 1138:11, 1184:3 content [1] - 1118:14 context [6] - 1124:24, 1148:3, 1156:3, 1199:23, 1231:21, 1233:10 continue [10] - 1096:7, 1096:9, 1156:13, 1157:4, 1162:24, 1192:5, 1218:3, 1246:23, 1256:24, 1285:21 continued [8] - 1048:13, 1078:13,</p>	<p>1082:3, 1130:22, 1131:6, 1180:12, 1247:24, 1275:21 CONTINUED [1] - 1057:6 continuing [3] - 1245:19, 1266:13, 1266:15 continuity [1] - 1181:20 contract [2] - 1221:12, 1223:7 contradicts [1] - 1034:23 contraindicated [1] - 1223:18 contrary [2] - 1072:21, 1079:2 contribute [1] - 1201:10 contributes [1] - 1176:3 contributing [1] - 1125:24 contributions [1] - 1258:14 contributors [1] - 1131:16 control [8] - 1050:7, 1050:22, 1133:24, 1137:9, 1154:2, 1154:5, 1162:22, 1257:20 controlled [27] - 1126:12, 1134:23, 1135:6, 1135:8, 1135:10, 1137:16, 1145:13, 1147:13, 1152:3, 1152:11, 1176:24, 1182:10, 1182:21, 1183:23, 1184:24, 1185:4, 1185:8, 1212:14, 1213:11, 1219:24, 1260:23, 1261:2, 1275:10, 1275:20, 1280:1, 1280:22, 1285:25 controversy [1] - 1206:14 conversation [23] - 1076:17, 1086:1, 1087:6, 1087:13, 1087:14, 1089:17, 1089:18, 1100:8, 1271:12, 1272:20, 1276:21, 1276:25, 1281:14, 1282:22, 1284:1, 1284:25, 1285:9, 1285:10, 1288:12, 1289:9, 1289:14, 1289:20, 1293:4 conversations [5] - 1085:23, 1086:9, 1088:15, 1282:19, 1289:22 convicted [11] - 1058:6, 1058:7, 1058:14, 1058:17, 1058:18, 1058:25, 1059:6, 1059:12, 1059:21, 1060:1, 1060:3 convicting [1] - 1039:10 conviction [4] - 1049:17, 1058:22, 1059:20, 1175:6 convictions [9] - 1048:16, 1048:17, 1048:21, 1048:25, 1049:9, 1057:10, 1058:1, 1058:10, 1110:3 Cooke [1] - 1059:13 cool [1] - 1164:14 cooperate [4] - 1256:1, 1256:23, 1256:24, 1267:19 cooperation [2] - 1256:15, 1259:6 coordination [1] - 1205:6 cope [3] - 1125:6, 1125:17, 1176:23 copes [1] - 1125:20 copies [4] - 1157:9, 1157:12, 1157:14, 1236:16 coping [6] - 1122:1, 1129:24, 1171:5, 1174:20, 1175:21, 1175:23 copy [2] - 1208:22, 1237:12 copying [1] - 1133:2 cord [1] - 1119:25 corner [5] - 1230:17, 1269:11,</p>	<p>correct [196] - 1033:20, 1033:24, 1034:4, 1037:4, 1060:13, 1060:18, 1061:11, 1062:12, 1064:1, 1067:9, 1068:24, 1070:3, 1074:2, 1074:3, 1074:21, 1074:22, 1074:25, 1075:3, 1078:4, 1078:24, 1081:23, 1083:22, 1084:4, 1084:25, 1085:8, 1086:3, 1086:4, 1086:23, 1087:17, 1089:21, 1090:17, 1092:19, 1093:1, 1094:10, 1095:7, 1095:16, 1095:19, 1096:16, 1098:6, 1100:17, 1105:9, 1109:13, 1109:22, 1110:13, 1112:1, 1132:18, 1136:23, 1137:8, 1140:20, 1140:21, 1144:22, 1152:5, 1153:23, 1155:7, 1155:16, 1157:10, 1166:22, 1168:25, 1169:11, 1172:4, 1181:7, 1184:25, 1186:2, 1187:19, 1187:22, 1188:1, 1188:18, 1188:23, 1189:7, 1189:20, 1191:9, 1191:20, 1191:24, 1192:11, 1192:18, 1192:23, 1193:1, 1194:11, 1194:24, 1195:3, 1195:4, 1195:11, 1195:19, 1195:22, 1196:4, 1196:10, 1196:13, 1196:16, 1196:22, 1197:7, 1197:9, 1198:1, 1198:5, 1198:14, 1198:17, 1198:20, 1199:5, 1199:14, 1199:19, 1200:12, 1200:21, 1200:24, 1201:11, 1202:6, 1202:10, 1203:20, 1204:9, 1204:10, 1204:13, 1204:20, 1205:6, 1205:13, 1205:16, 1206:1, 1206:20, 1207:9, 1207:22, 1208:7, 1208:13, 1208:17, 1209:14, 1209:24, 1210:6, 1210:14, 1211:1, 1211:11, 1212:6, 1212:19, 1213:20, 1213:25, 1215:1, 1215:20, 1216:16, 1216:20, 1217:11, 1218:25, 1220:11, 1221:13, 1222:11, 1223:19, 1223:24, 1224:6, 1224:11, 1224:16, 1225:7, 1226:16, 1226:21, 1227:1, 1227:19, 1227:22, 1228:21, 1229:19, 1230:9, 1230:25, 1232:7, 1232:13, 1232:19, 1232:21, 1233:4, 1233:5, 1233:12, 1233:15, 1233:22, 1233:23, 1234:12, 1234:16, 1235:7, 1235:21, 1235:25, 1236:2, 1237:12, 1238:11, 1239:10, 1239:22, 1240:8, 1240:20, 1240:21, 1240:25, 1244:11, 1244:17, 1244:21, 1247:25, 1249:21, 1256:7, 1256:11, 1257:3, 1257:7, 1258:5, 1258:19, 1266:24, 1267:5, 1267:11, 1280:22, 1281:2, 1291:12, 1295:4 correcting [1] - 1155:17 corrective [3] - 1121:5, 1137:8, 1146:6 correctly [8] - 1063:1, 1147:25, 1162:24, 1166:22, 1167:1, 1201:12, 1266:17, 1291:9 correlate [1] - 1127:2 correlation [1] - 1155:5 correspond [1] - 1138:20 cost [1] - 1195:7 Counsel [1] - 1073:8 counsel [16] - 1042:23, 1048:1, 1071:16, 1084:18, 1094:17, 1106:2, 1113:2, 1115:10, 1178:18, 1222:19,</p>
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<p>1238:19, 1240:7, 1241:9, 1253:5, 1262:13, 1263:24</p> <p>count [3] - 1064:19, 1069:5</p> <p>counter [1] - 1290:22</p> <p>country [4] - 1130:18, 1202:12, 1202:17, 1224:15</p> <p>County [2] - 1058:16, 1059:13</p> <p>couple [12] - 1044:13, 1124:13, 1127:16, 1128:9, 1131:13, 1136:9, 1137:20, 1152:21, 1190:7, 1246:24, 1267:5, 1289:23</p> <p>course [16] - 1038:24, 1065:18, 1070:5, 1093:20, 1147:6, 1150:21, 1154:16, 1180:17, 1190:1, 1245:25, 1247:17, 1253:6, 1253:9, 1261:13, 1262:4, 1291:24</p> <p>courses [1] - 1266:6</p> <p>COURT [221] - 1031:2, 1031:13, 1031:20, 1032:2, 1032:6, 1032:11, 1032:18, 1032:20, 1032:24, 1033:3, 1033:6, 1033:9, 1033:21, 1034:1, 1034:5, 1034:17, 1035:22, 1036:3, 1036:7, 1036:12, 1037:6, 1038:9, 1038:12, 1038:22, 1039:2, 1039:6, 1039:13, 1039:19, 1039:24, 1040:4, 1040:8, 1040:10, 1040:13, 1041:8, 1041:15, 1041:19, 1042:13, 1042:23, 1043:5, 1043:12, 1043:20, 1043:25, 1044:4, 1044:7, 1044:12, 1044:17, 1044:21, 1045:3, 1045:25, 1046:3, 1046:7, 1047:5, 1047:8, 1047:14, 1047:18, 1047:20, 1047:24, 1048:17, 1048:19, 1048:24, 1049:5, 1049:15, 1049:22, 1049:25, 1050:3, 1050:22, 1051:1, 1051:5, 1051:13, 1051:20, 1051:25, 1052:14, 1052:18, 1052:20, 1052:25, 1053:5, 1053:17, 1053:22, 1054:3, 1054:10, 1054:12, 1054:15, 1054:18, 1054:20, 1055:1, 1055:8, 1055:15, 1055:17, 1055:22, 1056:2, 1056:5, 1056:10, 1056:14, 1056:17, 1056:21, 1056:24, 1057:1, 1059:5, 1059:18, 1063:16, 1068:4, 1069:11, 1071:7, 1071:16, 1071:20, 1072:4, 1072:9, 1072:14, 1072:23, 1073:7, 1073:12, 1073:14, 1073:17, 1076:6, 1082:21, 1084:18, 1094:17, 1096:19, 1096:21, 1098:17, 1099:2, 1103:21, 1103:25, 1105:1, 1106:2, 1111:4, 1111:7, 1112:18, 1112:23, 1113:1, 1113:4, 1113:6, 1113:12, 1113:15, 1113:20, 1113:24, 1114:3, 1114:8, 1114:12, 1114:16, 1114:20, 1114:25, 1115:4, 1115:9, 1115:17, 1115:21, 1163:18, 1163:21, 1163:24, 1164:6, 1177:19, 1177:22, 1177:25, 1178:6, 1178:14, 1178:18, 1180:2, 1185:14, 1188:13, 1194:16, 1222:16, 1222:19, 1222:22, 1223:1, 1241:2, 1241:6, 1241:9, 1241:12, 1241:15, 1241:17, 1241:21, 1242:3, 1242:7, 1242:10, 1242:12, 1242:19, 1242:22, 1250:17, 1252:15, 1252:19, 1253:1, 1253:9,</p>	<p>1253:13, 1253:17, 1253:19, 1253:21, 1253:24, 1254:4, 1259:25, 1260:3, 1262:15, 1262:18, 1262:21, 1262:25, 1263:4, 1263:11, 1263:14, 1263:16, 1263:22, 1263:24, 1268:17, 1268:20, 1272:1, 1272:4, 1272:6, 1292:13, 1292:17, 1292:23, 1293:3, 1293:8, 1293:11, 1293:15, 1293:19, 1293:23, 1294:2, 1294:5, 1294:8, 1294:10, 1294:15, 1294:20, 1295:1</p> <p>court [2] - 1147:20, 1257:15</p> <p>Court [20] - 1031:15, 1033:25, 1035:19, 1038:23, 1040:1, 1043:10, 1046:11, 1048:11, 1050:15, 1050:25, 1052:8, 1053:14, 1054:24, 1241:20, 1242:5, 1252:25, 1258:3, 1259:23, 1260:17</p> <p>cover [5] - 1039:16, 1048:7, 1071:21, 1218:11</p> <p>covered [6] - 1048:19, 1071:16, 1071:20, 1072:2, 1264:12, 1264:14</p> <p>covers [1] - 1175:4</p> <p>coversheet [1] - 1196:24</p> <p>cramping [1] - 1206:7</p> <p>craving [3] - 1131:6, 1149:1, 1149:3</p> <p>cravings [3] - 1121:25, 1130:17, 1149:15</p> <p>crazy [3] - 1113:25, 1114:2, 1114:7</p> <p>creating [1] - 1173:9</p> <p>credentials [1] - 1242:15</p> <p>credibility [6] - 1049:13, 1049:15, 1049:16, 1049:17, 1049:18</p> <p>credit [4] - 1291:16, 1291:21, 1292:3, 1292:4</p> <p>crime [1] - 1059:16</p> <p>criminal [9] - 1043:3, 1048:15, 1048:17, 1049:4, 1057:9, 1109:21, 1193:23, 1258:1, 1258:15</p> <p>criteria [2] - 1131:4, 1190:19</p> <p>critical [1] - 1148:13</p> <p>Cross [1] - 1219:7</p> <p>cross [13] - 1034:7, 1034:14, 1038:5, 1042:15, 1042:24, 1043:2, 1047:3, 1048:13, 1050:20, 1072:10, 1072:24, 1125:11, 1185:16</p> <p>CROSS [2] - 1057:6, 1185:18</p> <p>cross-examination [7] - 1034:7, 1034:14, 1038:5, 1047:3, 1050:20, 1072:10, 1185:16</p> <p>CROSS-EXAMINATION [2] - 1057:6, 1185:18</p> <p>cross-examinations [1] - 1043:2</p> <p>cross-examine [1] - 1042:24</p> <p>cross-examined [1] - 1072:24</p> <p>crossing [1] - 1055:4</p> <p>crossover [1] - 1055:5</p> <p>CRR [1] - 1295:7</p> <p>crushing [1] - 1213:12</p> <p>cups [2] - 1220:18, 1220:21</p> <p>curb [2] - 1130:21, 1239:3</p> <p>current [9] - 1064:4, 1068:22, 1078:7, 1101:17, 1161:24, 1179:23, 1208:12, 1222:2, 1223:1, 1241:2, 1241:6,</p>	<p>curriculum [2] - 1115:11, 1115:19</p> <p>curt [1] - 1277:5</p> <p>curve [1] - 1121:25</p> <p>cuss [1] - 1072:15</p> <p>customers [5] - 1182:25, 1183:1, 1183:5, 1261:17, 1267:23</p> <p>cut [3] - 1042:21, 1055:11, 1077:11</p> <p>cutting [1] - 1076:5</p>
		D
		<p>D-e-V-i-d-o [1] - 1254:20</p> <p>daily [6] - 1087:19, 1087:20, 1095:21, 1182:10, 1261:24, 1285:19</p> <p>Dallas [3] - 1123:12, 1123:18, 1123:19</p> <p>dance [1] - 1175:1</p> <p>danger [1] - 1223:20</p> <p>dangerous [3] - 1129:7, 1154:2, 1181:5</p> <p>database [1] - 1237:3</p> <p>date [10] - 1104:8, 1109:4, 1193:1, 1236:4, 1238:1, 1271:10, 1280:7, 1280:12, 1280:13</p> <p>dates [3] - 1058:8, 1108:10, 1186:23</p> <p>David [3] - 1253:16, 1254:20, 1264:16</p> <p>DAVID [1] - 1254:7</p> <p>DAVIDSON [60] - 1047:10, 1047:15, 1047:19, 1047:21, 1048:11, 1048:18, 1048:21, 1049:2, 1049:8, 1049:20, 1049:23, 1050:2, 1050:14, 1050:24, 1051:3, 1054:7, 1057:4, 1057:7, 1059:9, 1059:10, 1059:16, 1059:19, 1063:15, 1063:17, 1068:5, 1069:9, 1069:12, 1071:9, 1072:7, 1072:11, 1072:18, 1073:3, 1073:11, 1073:13, 1073:16, 1073:18, 1076:2, 1076:7, 1082:19, 1082:22, 1083:1, 1084:20, 1094:19, 1096:18, 1098:15, 1098:25, 1104:14, 1104:18, 1104:21, 1111:3, 1112:25, 1113:22, 1113:25, 1114:4, 1114:6, 1293:2, 1293:4, 1293:10, 1293:14, 1294:19</p> <p>Davidson [9] - 1057:3, 1097:2, 1099:4, 1100:4, 1100:19, 1103:15, 1105:6, 1107:22, 1294:3</p> <p>Davis [1] - 1047:8</p> <p>day's [1] - 1119:17</p> <p>days [5] - 1050:18, 1105:12, 1105:14, 1152:21, 1285:10</p> <p>DEA [1] - 1189:23</p> <p>deal [5] - 1075:24, 1104:25, 1178:10, 1241:17, 1263:6</p> <p>dealer [2] - 1046:18, 1188:8</p> <p>dealing [3] - 1133:5, 1240:24, 1241:22</p> <p>deals [1] - 1070:3</p> <p>dealt [3] - 1178:6, 1178:7, 1187:17</p> <p>deaths [1] - 1177:12</p> <p>debate [1] - 1225:23</p> <p>December [19] - 1060:22, 1064:23, 1077:22, 1104:9, 1104:16, 1104:18, 1104:24, 1105:6, 1105:7, 1105:8, 1105:11, 1105:15, 1105:16, 1119:5,</p>

<p>1119:11, 1119:12, 1189:14, 1230:2, 1270:23</p> <p>decide [1] - 1121:4</p> <p>decided [2] - 1201:6, 1286:20</p> <p>decision [1] - 1232:21</p> <p>declining [1] - 1180:13</p> <p>Decoteau [5] - 1215:8, 1239:19, 1239:21, 1246:25, 1247:5</p> <p>decrease [3] - 1093:23, 1098:1, 1099:6</p> <p>deeper [3] - 1144:7, 1144:9, 1176:7</p> <p>defendant [1] - 1044:16</p> <p>Defense [2] - 1082:22, 1222:24</p> <p>defense [3] - 1042:14, 1048:1, 1050:17</p> <p>deficient [1] - 1134:1</p> <p>define [9] - 1117:17, 1124:15, 1126:9, 1127:5, 1128:13, 1130:13, 1134:5, 1137:22</p> <p>defined [3] - 1124:17, 1130:17, 1144:20</p> <p>defines [1] - 1240:14</p> <p>definitely [1] - 1214:18</p> <p>definition [11] - 1044:23, 1124:16, 1125:19, 1126:6, 1127:6, 1129:25, 1130:12, 1130:25, 1132:21, 1239:2, 1240:15</p> <p>definitions [1] - 1263:6</p> <p>degeneration [1] - 1174:24</p> <p>degenerative [7] - 1167:10, 1167:16, 1167:20, 1167:25, 1168:10, 1168:23, 1168:25</p> <p>degrees [2] - 1141:9</p> <p>deliberate [3] - 1044:19, 1045:5, 1045:10</p> <p>deliberately [1] - 1262:2</p> <p>deliver [2] - 1218:14, 1285:17</p> <p>delivered [1] - 1086:2</p> <p>delivery [2] - 1268:14, 1284:7</p> <p>demonstrated [1] - 1183:8</p> <p>Department [3] - 1120:13, 1120:19, 1237:11</p> <p>departure [1] - 1258:9</p> <p>depended [1] - 1195:9</p> <p>dependency [3] - 1118:21, 1121:16, 1149:1</p> <p>depositions [2] - 1124:6, 1124:7</p> <p>depressed [1] - 1069:19</p> <p>depression [8] - 1069:20, 1070:3, 1094:9, 1133:24, 1162:11, 1171:5, 1175:25, 1223:12</p> <p>Derek [3] - 1204:15, 1227:6, 1233:1</p> <p>describe [3] - 1158:24, 1172:21, 1206:18</p> <p>described [2] - 1058:19, 1165:21</p> <p>describing [3] - 1057:21, 1100:13, 1170:21</p> <p>description [2] - 1143:10, 1143:11</p> <p>designate [1] - 1242:5</p> <p>designated [2] - 1242:1, 1242:7</p> <p>designed [3] - 1079:7, 1094:9, 1095:6</p> <p>despite [2] - 1130:23, 1131:7</p> <p>detail [3] - 1037:23, 1040:8, 1256:14</p>	<p>details [12] - 1038:6, 1040:23, 1041:22, 1041:23, 1042:18, 1042:20, 1043:21, 1148:23, 1205:3, 1230:6, 1259:15, 1269:16</p> <p>deteriorate [1] - 1180:7</p> <p>determination [1] - 1278:16</p> <p>determine [3] - 1172:11, 1172:13, 1273:7</p> <p>determining [1] - 1263:7</p> <p>detrimental [1] - 1223:21</p> <p>develop [7] - 1122:4, 1129:24, 1166:5, 1167:24, 1201:16, 1219:9, 1231:25</p> <p>developed [2] - 1149:4, 1167:7</p> <p>developing [3] - 1129:2, 1137:7, 1149:5</p> <p>development [1] - 1052:12</p> <p>develops [1] - 1129:23</p> <p>DEVIDO [1] - 1254:7</p> <p>DeVido [6] - 1254:20, 1260:8, 1264:2, 1264:16, 1264:17, 1293:25</p> <p>deVido [2] - 1254:21, 1268:24</p> <p>diagnose [1] - 1132:25</p> <p>diagnosed [3] - 1077:16, 1077:19, 1078:9</p> <p>diagnosing [1] - 1227:15</p> <p>diagnosis [8] - 1140:14, 1140:16, 1144:14, 1150:14, 1150:16, 1150:17, 1161:6, 1162:3</p> <p>diagnostic [13] - 1126:8, 1140:15, 1143:3, 1147:20, 1147:24, 1148:25, 1151:20, 1154:22, 1160:23, 1182:3, 1235:15, 1274:24, 1276:3</p> <p>diagnostics [1] - 1140:5</p> <p>dial [2] - 1237:14, 1238:7</p> <p>dictate [2] - 1144:1, 1243:21</p> <p>dictates [1] - 1243:22</p> <p>dictation [1] - 1197:8</p> <p>died [1] - 1178:3</p> <p>difference [3] - 1128:5, 1128:7, 1193:24</p> <p>differences [1] - 1128:8</p> <p>different [38] - 1035:9, 1035:10, 1051:22, 1052:1, 1052:2, 1094:9, 1095:5, 1099:8, 1103:25, 1104:1, 1122:1, 1127:9, 1135:23, 1141:20, 1144:20, 1148:12, 1155:22, 1155:23, 1156:14, 1170:3, 1170:17, 1170:18, 1174:15, 1175:12, 1177:12, 1190:9, 1191:7, 1196:21, 1198:19, 1206:19, 1233:14, 1255:6, 1255:19, 1263:20, 1266:19, 1269:17, 1287:11</p> <p>differential [2] - 1161:5, 1162:3</p> <p>differently [4] - 1037:25, 1080:25, 1146:18, 1175:16</p> <p>diffused [1] - 1161:8</p> <p>dig [2] - 1144:6, 1144:9</p> <p>diligence [1] - 1160:9</p> <p>dinner [1] - 1292:25</p> <p>diplomat [2] - 1118:10, 1118:12</p> <p>DIRECT [2] - 1116:2, 1254:10</p> <p>direct [10] - 1056:12, 1072:8, 1072:9, 1141:22, 1186:1, 1221:9, 1247:22, 1244:8</p>	<p>1250:13, 1270:6, 1288:10</p> <p>direction [3] - 1155:22, 1155:23, 1156:14</p> <p>directly [3] - 1127:10, 1198:20, 1254:5</p> <p>director [2] - 1119:15, 1220:6</p> <p>disability [14] - 1122:7, 1122:8, 1122:10, 1134:11, 1171:7, 1171:21, 1172:14, 1172:16, 1175:6, 1175:20, 1175:24, 1176:10, 1176:16, 1188:3</p> <p>disabled [3] - 1171:20, 1171:24, 1176:6</p> <p>disagree [4] - 1035:2, 1192:10, 1192:13</p> <p>disc [13] - 1167:9, 1167:10, 1167:12, 1167:16, 1167:20, 1167:25, 1168:10, 1168:11, 1168:23, 1168:25, 1169:17, 1169:20</p> <p>discharge [2] - 1186:10, 1237:21</p> <p>discogenic [1] - 1169:1</p> <p>disconnect [2] - 1144:5, 1171:1</p> <p>discretion [2] - 1233:12, 1259:8</p> <p>discs [3] - 1167:19, 1169:1, 1227:13</p> <p>discuss [15] - 1031:14, 1047:17, 1070:21, 1098:19, 1105:22, 1106:8, 1106:13, 1106:20, 1107:4, 1107:14, 1108:25, 1109:25, 1110:2, 1110:19, 1110:24</p> <p>discussed [19] - 1047:21, 1050:15, 1061:9, 1061:19, 1070:15, 1071:1, 1071:5, 1071:12, 1086:6, 1086:18, 1090:23, 1106:15, 1106:22, 1110:25, 1138:2, 1148:13, 1184:5, 1252:22, 1256:18</p> <p>discussing [6] - 1060:21, 1069:19, 1074:15, 1074:18, 1088:7, 1090:20</p> <p>discussion [7] - 1061:23, 1086:25, 1088:5, 1089:12, 1235:23, 1239:8, 1289:17</p> <p>disease [11] - 1074:22, 1130:15, 1130:16, 1138:19, 1167:16, 1167:20, 1167:25, 1168:11, 1168:23, 1168:25, 1210:6</p> <p>diseases [1] - 1210:2</p> <p>disgusted [1] - 1215:11</p> <p>dismiss [1] - 1258:4</p> <p>dismissed [2] - 1256:4, 1256:9</p> <p>disorder [9] - 1134:1, 1134:3, 1148:15, 1148:18, 1166:6, 1210:11, 1219:23, 1220:8</p> <p>disorders [8] - 1133:23, 1133:24, 1133:25, 1134:2, 1134:6, 1177:9, 1210:14, 1218:1</p> <p>disorientation [1] - 1223:12</p> <p>dispense [4] - 1260:23, 1261:1, 1261:7, 1282:10</p> <p>dispensing [2] - 1282:13, 1283:23</p> <p>disprove [1] - 1041:22</p> <p>dispute [1] - 1240:2</p> <p>disputing [1] - 1053:5</p> <p>disruption [1] - 1114:8</p> <p>distances [1] - 1182:20</p> <p>distinction [3] - 1142:12, 1243:15, 1244:8</p>
--	---	--

<p>distinguish [3] - 1127:5, 1127:16, 1131:2</p> <p>distinguished [1] - 1128:2</p> <p>distortion [1] - 1175:14</p> <p>distribute [1] - 1255:7</p> <p>distribution [2] - 1083:24, 1167:6</p> <p>district [1] - 1257:2</p> <p>District [1] - 1257:3</p> <p>divert [1] - 1120:6</p> <p>diverting [1] - 1081:12</p> <p>divide [1] - 1174:21</p> <p>DiVido [1] - 1253:16</p> <p>division [5] - 1119:25, 1120:2, 1120:14, 1120:20, 1121:2</p> <p>divisions [1] - 1119:24</p> <p>divorce [1] - 1134:7</p> <p>doctor [130] - 1035:7, 1035:10, 1036:22, 1040:3, 1040:15, 1041:2, 1043:11, 1044:22, 1045:3, 1045:15, 1045:16, 1045:18, 1046:16, 1051:11, 1052:15, 1053:9, 1054:23, 1055:18, 1064:4, 1068:1, 1070:14, 1071:1, 1072:15, 1074:24, 1075:2, 1092:4, 1097:8, 1097:17, 1097:19, 1098:20, 1099:8, 1099:13, 1099:23, 1100:1, 1100:4, 1105:14, 1108:22, 1111:13, 1115:21, 1116:16, 1119:19, 1131:18, 1136:22, 1137:10, 1137:13, 1137:15, 1137:25, 1144:1, 1146:9, 1146:14, 1146:20, 1146:22, 1147:3, 1148:7, 1149:7, 1149:16, 1150:22, 1151:8, 1151:24, 1151:25, 1152:19, 1153:12, 1154:9, 1155:11, 1160:7, 1160:9, 1160:17, 1160:24, 1161:13, 1162:16, 1162:19, 1163:11, 1169:7, 1169:8, 1169:9, 1172:10, 1172:23, 1174:11, 1176:7, 1179:7, 1190:8, 1190:14, 1193:25, 1194:1, 1196:18, 1198:20, 1199:7, 1203:15, 1204:4, 1204:16, 1204:20, 1204:24, 1206:1, 1208:12, 1210:5, 1210:17, 1210:24, 1211:13, 1213:15, 1213:22, 1213:24, 1219:18, 1225:9, 1227:18, 1232:15, 1232:20, 1233:7, 1235:10, 1235:11, 1238:7, 1238:14, 1240:22, 1245:6, 1247:2, 1248:5, 1248:10, 1250:2, 1251:9, 1279:12, 1279:22, 1281:23, 1283:7, 1283:11, 1283:16, 1284:8, 1286:23</p> <p>doctor's [11] - 1031:23, 1039:25, 1040:5, 1040:16, 1043:23, 1044:25, 1076:14, 1085:14, 1123:19, 1198:10, 1235:14</p> <p>doctors [47] - 1033:11, 1064:1, 1075:7, 1079:15, 1097:20, 1100:16, 1101:9, 1101:20, 1101:22, 1137:15, 1137:17, 1137:24, 1137:25, 1192:13, 1192:16, 1195:13, 1202:12, 1204:11, 1204:13, 1205:5, 1205:20, 1208:6, 1208:17, 1209:24, 1210:4, 1212:22, 1217:7, 1227:4, 1227:23, 1232:23, 1237:4, 1237:9, 1238:10, 1238:24, 1245:14, 1248:3, 1274:24, 1275:1, 1275:5, 1275:11, 1275:13, 1275:19,</p>	<p>1281:1, 1281:4, 1281:5, 1282:4</p> <p>doctors' [2] - 1198:25, 1199:12</p> <p>document [10] - 1105:8, 1135:15, 1141:5, 1148:2, 1181:25, 1203:2, 1204:8, 1223:6, 1223:24, 1262:18</p> <p>documentation [24] - 1141:8, 1141:11, 1141:17, 1141:19, 1145:22, 1168:7, 1181:12, 1181:14, 1181:17, 1181:18, 1193:12, 1203:3, 1203:6, 1207:16, 1208:9, 1211:24, 1214:1, 1236:14, 1243:17, 1243:22, 1244:12, 1244:13, 1249:9, 1249:13</p> <p>documented [10] - 1139:4, 1139:6, 1143:12, 1153:5, 1224:9, 1225:15, 1225:17, 1230:11, 1235:10, 1246:22</p> <p>documenting [2] - 1207:21, 1207:25</p> <p>documents [7] - 1034:18, 1034:20, 1036:17, 1077:23, 1257:20</p> <p>dollar [2] - 1125:1, 1125:4</p> <p>dollars [1] - 1125:7</p> <p>donations [1] - 1258:17</p> <p>done [14] - 1039:7, 1039:8, 1041:3, 1043:15, 1066:21, 1089:20, 1122:11, 1124:2, 1127:1, 1201:12, 1221:25, 1236:2, 1249:11, 1257:11</p> <p>dope [2] - 1071:23, 1072:25</p> <p>dosage [17] - 1046:22, 1066:4, 1068:1, 1098:3, 1106:5, 1153:12, 1153:14, 1181:2, 1181:4, 1216:6, 1249:25, 1250:15, 1250:21, 1251:5, 1251:15, 1251:16, 1262:11</p> <p>dosages [1] - 1181:4</p> <p>dose [7] - 1181:8, 1181:10, 1191:1, 1225:11, 1225:12, 1231:15, 1236:7</p> <p>doses [2] - 1180:25, 1225:3</p> <p>dot [1] - 1125:11</p> <p>doubt [1] - 1204:2</p> <p>doubts [1] - 1063:10</p> <p>down [42] - 1037:7, 1038:17, 1042:21, 1047:7, 1065:2, 1065:22, 1066:5, 1068:21, 1069:5, 1069:16, 1071:24, 1074:7, 1089:25, 1090:7, 1092:12, 1098:7, 1110:21, 1112:3, 1112:18, 1126:3, 1155:2, 1155:6, 1157:17, 1163:24, 1164:4, 1164:7, 1164:14, 1166:12, 1167:5, 1167:6, 1179:6, 1181:24, 1205:16, 1208:25, 1209:4, 1209:18, 1235:23, 1250:22, 1252:15, 1284:7, 1292:23</p> <p>download [1] - 1237:15</p> <p>downloaded [1] - 1237:19</p> <p>downstairs [1] - 1061:6</p> <p>downtown [1] - 1114:7</p> <p>downward [7] - 1239:7, 1239:12, 1240:3, 1240:5, 1250:11, 1250:24, 1258:9</p> <p>DPS [1] - 1237:19</p> <p>dr [1] - 1164:22</p> <p>Dr [284] - 1032:1, 1034:20, 1043:11, 1043:19, 1044:5, 1044:10, 1045:6, 1045:11, 1051:21, 1051:23, 1052:9, 1053:15, 1053:18, 1053:19, 1053:23, 1054:4, 1054:8, 1054:10, 1056:1</p>	<p>1057:13, 1060:21, 1061:14, 1061:16, 1062:7, 1063:2, 1063:4, 1063:5, 1063:19, 1063:21, 1064:9, 1064:18, 1064:24, 1065:13, 1065:17, 1065:20, 1066:2, 1066:8, 1066:14, 1067:2, 1068:10, 1068:24, 1069:2, 1070:6, 1070:19, 1070:22, 1071:3, 1071:4, 1071:14, 1073:21, 1074:10, 1074:15, 1075:2, 1075:4, 1075:8, 1075:12, 1075:21, 1075:25, 1076:8, 1076:17, 1077:12, 1077:18, 1078:11, 1079:5, 1079:21, 1080:7, 1081:4, 1081:10, 1084:22, 1085:10, 1086:15, 1086:22, 1090:17, 1092:11, 1093:11, 1093:12, 1093:21, 1094:5, 1094:13, 1094:22, 1096:14, 1097:2, 1097:6, 1097:10, 1097:16, 1097:19, 1097:22, 1098:3, 1098:13, 1100:14, 1101:12, 1101:17, 1101:23, 1101:25, 1102:2, 1102:23, 1102:25, 1104:10, 1105:5, 1105:24, 1106:10, 1106:14, 1106:18, 1107:5, 1107:15, 1107:17, 1108:3, 1108:5, 1109:24, 1110:18, 1110:23, 1111:2, 1112:5, 1115:3, 1120:3, 1120:5, 1123:10, 1131:10, 1138:24, 1140:18, 1140:25, 1141:22, 1142:20, 1142:25, 1144:9, 1144:13, 1144:17, 1145:1, 1146:8, 1146:10, 1147:18, 1150:4, 1150:9, 1150:14, 1151:1, 1151:2, 1151:8, 1151:12, 1151:21, 1152:12, 1153:22, 1154:14, 1157:8, 1157:19, 1159:8, 1159:20, 1160:18, 1161:10, 1161:21, 1161:23, 1165:15, 1166:14, 1167:14, 1171:8, 1176:11, 1176:19, 1178:21, 1179:19, 1180:4, 1180:7, 1181:14, 1182:4, 1183:6, 1183:8, 1183:14, 1183:18, 1183:23, 1184:11, 1184:13, 1185:4, 1185:7, 1185:12, 1185:20, 1187:6, 1188:16, 1188:19, 1188:24, 1189:3, 1189:9, 1189:22, 1193:14, 1194:19, 1194:23, 1195:19, 1195:25, 1197:12, 1197:19, 1201:6, 1203:17, 1204:23, 1205:11, 1205:14, 1205:15, 1206:25, 1209:6, 1210:22, 1212:1, 1213:22, 1214:23, 1215:9, 1216:10, 1216:24, 1217:4, 1217:8, 1219:16, 1221:12, 1221:21, 1222:11, 1223:4, 1226:7, 1226:23, 1230:11, 1230:21, 1233:2, 1236:17, 1237:8, 1237:18, 1239:6, 1239:12, 1239:24, 1240:11, 1243:3, 1244:20, 1245:2, 1245:8, 1246:19, 1247:16, 1248:11, 1248:21, 1249:1, 1249:8, 1249:19, 1250:1, 1250:3, 1250:4, 1251:2, 1255:2, 1255:5, 1261:7, 1261:12, 1261:18, 1261:24, 1262:3, 1262:11, 1270:17, 1270:22, 1271:6, 1271:12, 1272:4, 1272:8, 1272:12, 1272:14, 1272:18, 1272:20, 1272:23, 1273:10, 1273:16, 1274:12, 1275:3, 1275:24, 1276:4, 1276:22, 1276:24, 1277:4, 1277:14, 1277:15, 1278:2, 1281:17, 1282:20, 1282:25, 1283:16, 1284:13,</p>
---	---	---

<p>1285:2, 1285:25, 1287:17, 1288:13, 1289:9, 1289:21, 1291:13, 1292:12, 1294:7</p> <p>dramatization [1] - 1175:2</p> <p>driver [1] - 1284:7</p> <p>driving [5] - 1124:24, 1162:14, 1172:13, 1172:16, 1177:10</p> <p>dropkick [1] - 1239:3</p> <p>dropped [2] - 1164:9, 1267:24</p> <p>dropping [1] - 1164:12</p> <p>drops [1] - 1164:14</p> <p>drug [93] - 1046:18, 1057:12, 1057:14, 1057:21, 1110:22, 1127:23, 1127:25, 1130:17, 1130:20, 1133:17, 1135:12, 1135:13, 1136:11, 1136:14, 1136:15, 1136:16, 1136:17, 1136:18, 1136:19, 1136:24, 1137:11, 1139:14, 1139:17, 1139:20, 1139:21, 1146:3, 1146:4, 1146:7, 1146:10, 1146:14, 1146:22, 1146:24, 1147:1, 1147:4, 1148:15, 1149:20, 1152:10, 1152:14, 1152:24, 1153:10, 1154:5, 1159:4, 1159:5, 1166:3, 1179:1, 1179:11, 1179:14, 1179:15, 1184:5, 1188:8, 1190:3, 1190:4, 1190:10, 1193:9, 1193:10, 1193:22, 1194:6, 1194:8, 1196:1, 1212:9, 1212:16, 1219:11, 1220:3, 1220:10, 1231:18, 1232:11, 1232:15, 1232:25, 1233:10, 1233:18, 1233:21, 1233:24, 1234:11, 1234:13, 1234:19, 1234:23, 1236:19, 1236:25, 1237:2, 1237:3, 1245:12, 1246:6, 1246:7, 1248:15, 1249:14, 1274:24, 1275:6, 1281:1</p> <p>Drug [2] - 1212:18, 1260:21</p> <p>drugs [53] - 1040:18, 1120:7, 1136:21, 1137:18, 1137:19, 1139:23, 1140:9, 1146:1, 1147:11, 1147:14, 1149:1, 1149:15, 1150:5, 1152:13, 1152:22, 1153:6, 1154:21, 1158:1, 1158:24, 1159:22, 1160:8, 1160:15, 1166:9, 1172:4, 1173:13, 1173:21, 1173:25, 1176:23, 1180:13, 1184:17, 1184:18, 1194:21, 1212:21, 1216:7, 1223:17, 1233:4, 1238:22, 1240:24, 1246:17, 1252:5, 1255:7, 1266:9, 1274:21, 1280:2, 1280:22, 1282:5, 1282:13, 1284:15, 1284:18, 1284:19, 1291:11, 1292:7</p> <p>due [3] - 1067:8, 1115:21, 1144:17</p> <p>duly [2] - 1115:25, 1254:8</p> <p>DuPage [2] - 1058:15, 1058:16</p> <p>duration [1] - 1225:5</p> <p>during [31] - 1061:24, 1062:24, 1070:5, 1070:18, 1071:1, 1071:2, 1071:5, 1076:15, 1076:22, 1078:10, 1079:4, 1094:12, 1094:14, 1134:8, 1190:23, 1191:11, 1193:18, 1193:19, 1194:5, 1195:6, 1213:1, 1219:8, 1234:8, 1235:2, 1237:8, 1253:6, 1253:9, 1269:18, 1275:9, 1287:14</p> <p>duty [1] - 1052:15</p> <p>dyes [1] - 1227:12</p>	<p>dysfunction [1] - 1223:13</p> <p style="text-align: center;">E</p> <p>ear [1] - 1244:5</p> <p>early [12] - 1060:12, 1103:6, 1129:2, 1135:13, 1136:20, 1137:1, 1211:14, 1264:22, 1271:13, 1289:13, 1289:20, 1292:11</p> <p>Eddie [4] - 1246:25, 1247:8, 1247:21, 1249:18</p> <p>editorial [1] - 1122:9</p> <p>education [7] - 1034:22, 1120:7, 1121:6, 1191:12, 1265:9, 1266:13, 1266:15</p> <p>educational [3] - 1033:14, 1033:15, 1034:9</p> <p>effect [4] - 1173:13, 1193:18, 1210:17, 1210:19</p> <p>effective [1] - 1190:19</p> <p>effects [2] - 1128:7, 1223:21</p> <p>effort [2] - 1161:23, 1211:16</p> <p>eight [5] - 1051:4, 1186:6, 1275:15, 1275:16, 1280:25</p> <p>either [25] - 1093:23, 1102:17, 1123:24, 1130:8, 1134:13, 1138:4, 1142:3, 1144:10, 1147:10, 1149:4, 1151:22, 1152:6, 1152:20, 1165:25, 1171:12, 1181:5, 1183:9, 1220:19, 1248:17, 1249:10, 1265:21, 1271:13, 1277:4, 1277:14, 1290:1</p> <p>elaborate [1] - 1282:4</p> <p>electronic [4] - 1197:7, 1197:12, 1237:10, 1237:24</p> <p>electronically [1] - 1237:15</p> <p>elements [5] - 1125:24, 1127:23, 1130:16, 1131:2, 1223:8</p> <p>eligible [1] - 1181:17</p> <p>eliminate [2] - 1161:7, 1162:13</p> <p>ELMO [3] - 1104:1, 1104:4, 1108:17</p> <p>elsewhere [2] - 1099:15, 1251:14</p> <p>emotional [8] - 1124:18, 1124:21, 1124:23, 1130:2, 1130:5, 1134:8, 1143:8</p> <p>emotions [1] - 1175:10</p> <p>employee [2] - 1285:2, 1294:6</p> <p>employees [2] - 1272:5, 1290:7</p> <p>employment [3] - 1119:12, 1171:18, 1172:7</p> <p>enable [2] - 1248:16, 1250:6</p> <p>enabling [1] - 1153:11</p> <p>encounter [1] - 1233:7</p> <p>encountered [1] - 1230:14</p> <p>encourage [1] - 1191:8</p> <p>end [7] - 1113:8, 1127:6, 1218:11, 1225:12, 1229:14, 1259:1, 1284:24</p> <p>endanger [1] - 1248:15</p> <p>enforcement [1] - 1237:4</p> <p>Enforcement [1] - 1260:22</p> <p>engage [1] - 1177:14</p> <p>engaged [1] - 1085:22</p> <p>entire [2] - 1084:25, 1085:7</p> <p>entitled [3] - 1175:8, 1259:8, 1295:5</p> <p>entitlement [3] - 1175:4, 1175:5, 1175:7</p> <p>entity [1] - 1219:20</p> <p>envelope [1] - 1285:4</p> <p>environmental [1] - 1130:15</p> <p>equated [1] - 1134:9</p> <p>equipment [1] - 1195:14</p> <p>eroding [1] - 1169:17</p> <p>error [1] - 1105:2</p> <p>escalate [3] - 1130:20, 1133:14, 1137:5</p> <p>escalation [1] - 1136:24</p> <p>especially [2] - 1176:9, 1276:18</p> <p>essentially [9] - 1031:25, 1128:5, 1140:2, 1169:4, 1184:13, 1223:23, 1240:12, 1242:15, 1291:1</p> <p>establish [3] - 1038:25, 1184:22, 1196:9</p> <p>established [1] - 1184:25</p> <p>et [3] - 1038:13, 1107:11, 1184:5</p> <p>ethical [5] - 1238:25, 1248:3, 1248:11, 1250:1, 1250:2</p> <p>euphoria [1] - 1158:12</p> <p>evaluate [1] - 1210:17</p> <p>evaluating [1] - 1136:12</p> <p>evaluation [10] - 1053:12, 1148:17, 1204:5, 1204:7, 1205:22, 1209:10, 1243:19, 1243:20, 1244:1, 1244:3</p> <p>Evans [207] - 1032:1, 1043:11, 1045:6, 1045:11, 1051:23, 1053:18, 1053:19, 1054:4, 1054:8, 1057:13, 1061:14, 1061:16, 1062:7, 1063:2, 1064:18, 1064:24, 1065:13, 1065:17, 1065:20, 1066:2, 1066:8, 1066:14, 1067:2, 1068:10, 1068:24, 1069:2, 1070:6, 1070:19, 1070:22, 1071:3, 1071:4, 1071:14, 1073:21, 1074:10, 1074:15, 1075:4, 1075:8, 1075:12, 1075:21, 1076:8, 1076:17, 1078:11, 1079:5, 1079:21, 1081:4, 1081:10, 1086:15, 1086:22, 1090:17, 1092:11, 1093:12, 1093:21, 1094:5, 1094:22, 1096:14, 1097:6, 1097:10, 1097:16, 1097:19, 1097:22, 1098:3, 1098:13, 1100:14, 1101:12, 1101:17, 1101:25, 1102:2, 1102:23, 1102:25, 1104:10, 1105:5, 1105:24, 1106:10, 1106:14, 1106:18, 1107:5, 1107:15, 1107:17, 1108:3, 1108:5, 1110:18, 1111:2, 1131:10, 1138:24, 1140:25, 1141:22, 1142:20, 1142:25, 1144:9, 1144:13, 1144:17, 1145:1, 1147:18, 1150:4, 1150:9, 1150:14, 1151:2, 1151:8, 1151:12, 1151:21, 1153:22, 1154:14, 1157:8, 1157:19, 1159:8, 1159:20, 1160:18, 1161:10, 1161:21, 1161:23, 1165:15, 1166:14, 1167:14, 1171:8, 1176:11, 1176:19, 1178:21, 1180:4, 1180:7, 1181:14, 1182:4, 1183:8, 1183:14, 1183:18, 1183:23, 1184:11, 1184:13,</p>	<p>1257:25</p> <p>entire [2] - 1084:25, 1085:7</p> <p>entitled [3] - 1175:8, 1259:8, 1295:5</p> <p>entitlement [3] - 1175:4, 1175:5, 1175:7</p> <p>entity [1] - 1219:20</p> <p>envelope [1] - 1285:4</p> <p>environmental [1] - 1130:15</p> <p>equated [1] - 1134:9</p> <p>equipment [1] - 1195:14</p> <p>eroding [1] - 1169:17</p> <p>error [1] - 1105:2</p> <p>escalate [3] - 1130:20, 1133:14, 1137:5</p> <p>escalation [1] - 1136:24</p> <p>especially [2] - 1176:9, 1276:18</p> <p>essentially [9] - 1031:25, 1128:5, 1140:2, 1169:4, 1184:13, 1223:23, 1240:12, 1242:15, 1291:1</p> <p>establish [3] - 1038:25, 1184:22, 1196:9</p> <p>established [1] - 1184:25</p> <p>et [3] - 1038:13, 1107:11, 1184:5</p> <p>ethical [5] - 1238:25, 1248:3, 1248:11, 1250:1, 1250:2</p> <p>euphoria [1] - 1158:12</p> <p>evaluate [1] - 1210:17</p> <p>evaluating [1] - 1136:12</p> <p>evaluation [10] - 1053:12, 1148:17, 1204:5, 1204:7, 1205:22, 1209:10, 1243:19, 1243:20, 1244:1, 1244:3</p> <p>Evans [207] - 1032:1, 1043:11, 1045:6, 1045:11, 1051:23, 1053:18, 1053:19, 1054:4, 1054:8, 1057:13, 1061:14, 1061:16, 1062:7, 1063:2, 1064:18, 1064:24, 1065:13, 1065:17, 1065:20, 1066:2, 1066:8, 1066:14, 1067:2, 1068:10, 1068:24, 1069:2, 1070:6, 1070:19, 1070:22, 1071:3, 1071:4, 1071:14, 1073:21, 1074:10, 1074:15, 1075:4, 1075:8, 1075:12, 1075:21, 1076:8, 1076:17, 1078:11, 1079:5, 1079:21, 1081:4, 1081:10, 1086:15, 1086:22, 1090:17, 1092:11, 1093:12, 1093:21, 1094:5, 1094:22, 1096:14, 1097:6, 1097:10, 1097:16, 1097:19, 1097:22, 1098:3, 1098:13, 1100:14, 1101:12, 1101:17, 1101:25, 1102:2, 1102:23, 1102:25, 1104:10, 1105:5, 1105:24, 1106:10, 1106:14, 1106:18, 1107:5, 1107:15, 1107:17, 1108:3, 1108:5, 1110:18, 1111:2, 1131:10, 1138:24, 1140:25, 1141:22, 1142:20, 1142:25, 1144:9, 1144:13, 1144:17, 1145:1, 1147:18, 1150:4, 1150:9, 1150:14, 1151:2, 1151:8, 1151:12, 1151:21, 1153:22, 1154:14, 1157:8, 1157:19, 1159:8, 1159:20, 1160:18, 1161:10, 1161:21, 1161:23, 1165:15, 1166:14, 1167:14, 1171:8, 1176:11, 1176:19, 1178:21, 1180:4, 1180:7, 1181:14, 1182:4, 1183:8, 1183:14, 1183:18, 1183:23, 1184:11, 1184:13,</p>
---	--	--

<p>1185:4, 1185:7, 1185:12, 1188:16, 1188:19, 1188:24, 1189:22, 1194:19, 1194:23, 1195:19, 1195:25, 1197:12, 1197:19, 1201:6, 1203:17, 1204:23, 1205:15, 1206:25, 1215:9, 1217:4, 1221:21, 1229:20, 1230:3, 1230:21, 1233:2, 1239:6, 1239:12, 1239:24, 1244:20, 1245:2, 1245:8, 1246:19, 1247:16, 1248:11, 1248:21, 1249:1, 1249:8, 1249:19, 1250:4, 1251:2, 1255:3, 1255:5, 1261:8, 1261:12, 1261:24, 1262:3, 1262:11, 1270:17, 1270:22, 1271:6, 1271:12, 1272:12, 1272:14, 1272:18, 1272:20, 1272:23, 1273:10, 1273:16, 1274:12, 1275:3, 1275:24, 1276:4, 1276:22, 1276:24, 1277:4, 1278:2, 1281:17, 1282:20, 1282:25, 1284:13, 1285:2, 1285:25, 1287:17, 1288:13, 1289:9, 1289:21, 1292:12, 1294:7</p> <p>Evans' [36] - 1034:20, 1053:15, 1053:23, 1060:21, 1063:19, 1063:21, 1064:9, 1075:2, 1077:18, 1080:7, 1084:22, 1085:10, 1093:11, 1093:12, 1094:13, 1109:24, 1110:23, 1112:5, 1140:18, 1146:10, 1152:12, 1179:19, 1189:3, 1209:6, 1216:10, 1216:24, 1221:12, 1222:11, 1226:7, 1230:11, 1237:18, 1261:18, 1272:8, 1277:14, 1283:16, 1291:13</p> <p>Evans's [1] - 1277:15</p> <p>evening [2] - 1031:18, 1294:20</p> <p>event [2] - 1134:4, 1263:17</p> <p>eventually [2] - 1218:9, 1290:24</p> <p>evidence [62] - 1033:22, 1035:24, 1038:7, 1038:9, 1039:7, 1039:8, 1040:20, 1041:9, 1041:11, 1041:21, 1044:1, 1046:14, 1053:7, 1053:13, 1055:10, 1128:17, 1128:24, 1129:6, 1129:10, 1129:15, 1129:16, 1130:10, 1131:17, 1135:11, 1141:4, 1143:7, 1143:13, 1144:8, 1144:13, 1145:1, 1145:3, 1147:17, 1148:10, 1150:12, 1150:25, 1151:12, 1169:18, 1171:14, 1176:12, 1176:14, 1183:3, 1183:14, 1183:16, 1183:18, 1184:21, 1188:24, 1190:12, 1190:17, 1190:18, 1190:20, 1190:25, 1191:3, 1191:4, 1194:18, 1226:8, 1240:11, 1245:20, 1249:12, 1262:19</p> <p>evidentiary [2] - 1039:3, 1039:5</p> <p>evolution [2] - 1191:12, 1191:16</p> <p>evolved [2] - 1128:22, 1218:7</p> <p>evolves [1] - 1128:20</p> <p>Ex [2] - 1086:1, 1290:18</p> <p>exact [2] - 1124:4, 1234:2</p> <p>exactly [13] - 1055:24, 1055:25, 1075:6, 1076:16, 1077:3, 1085:13, 1098:12, 1105:18, 1233:7, 1238:3, 1260:9, 1269:11, 1285:12</p> <p>exam [19] - 1127:2, 1132:13, 1134:20, 1138:16, 1138:17, 1138:22, 1140:14, 1141:2, 1144:2, 1145:14, 1145:15,</p>	<p>1148:8, 1149:19, 1151:9, 1151:13, 1184:3, 1202:18, 1204:9, 1235:7</p> <p>EXAMINATION [6] - 1057:6, 1096:22, 1116:2, 1185:18, 1243:1, 1254:10</p> <p>examination [25] - 1034:3, 1034:7, 1034:14, 1038:2, 1038:5, 1047:3, 1050:20, 1056:12, 1061:18, 1072:10, 1101:16, 1126:21, 1138:15, 1140:7, 1140:8, 1141:4, 1161:24, 1185:16, 1202:13, 1202:22, 1203:18, 1204:1, 1247:22</p> <p>examinations [3] - 1043:2, 1140:24, 1144:10</p> <p>examine [3] - 1042:24, 1140:19, 1149:16</p> <p>examined [1] - 1072:24</p> <p>examiner [1] - 1122:12</p> <p>examining [2] - 1122:12, 1149:7</p> <p>example [15] - 1044:11, 1045:12, 1128:21, 1129:12, 1134:5, 1140:4, 1143:16, 1148:9, 1153:21, 1154:21, 1175:24, 1232:10, 1233:1, 1239:16</p> <p>examples [4] - 1145:5, 1207:11, 1237:19, 1288:3</p> <p>exams [5] - 1122:13, 1145:16, 1145:17, 1150:7, 1204:13</p> <p>except [1] - 1253:5</p> <p>exception [4] - 1146:3, 1169:20, 1228:24, 1276:16</p> <p>exceptions [1] - 1228:25</p> <p>exchange [1] - 1255:25</p> <p>exchanged [1] - 1099:11</p> <p>excited [1] - 1125:4</p> <p>excluding [1] - 1159:2</p> <p>excruciating [1] - 1087:17</p> <p>excuse [6] - 1104:14, 1111:7, 1186:15, 1211:15, 1227:25, 1252:16</p> <p>excused [1] - 1163:25</p> <p>execration [2] - 1143:13, 1155:19</p> <p>executed [1] - 1264:5</p> <p>executive [1] - 1220:6</p> <p>exercise [10] - 1129:16, 1156:1, 1170:9, 1170:15, 1175:25, 1182:7, 1182:8, 1182:14, 1201:13, 1201:14</p> <p>exercises [3] - 1142:18, 1170:17, 1202:4</p> <p>exertion [1] - 1067:24</p> <p>exhaust [4] - 1129:9, 1129:13, 1131:18, 1226:8</p> <p>exhausted [5] - 1131:17, 1132:6, 1132:9, 1213:17, 1213:18</p> <p>exhausting [1] - 1190:13</p> <p>exhaustive [1] - 1184:21</p> <p>Exhibit [11] - 1030:1, 1077:21, 1082:23, 1103:19, 1104:7, 1108:18, 1109:7, 1222:24, 1268:9, 1268:16, 1268:21</p> <p>exhibit [1] - 1222:23</p> <p>exists [1] - 1259:21</p> <p>expand [1] - 1267:21</p> <p>expect [6] - 1037:19, 1056:4, 1136:13, 1168:11, 1182:24, 1199:7</p>	<p>expected [1] - 1222:8</p> <p>expensive [5] - 1195:4, 1195:14, 1216:22, 1218:15, 1218:19</p> <p>experience [13] - 1033:14, 1033:16, 1034:9, 1100:12, 1118:3, 1119:1, 1119:2, 1158:23, 1174:7, 1219:25, 1280:24, 1281:4, 1281:7</p> <p>experienced [1] - 1047:25</p> <p>expert [20] - 1031:15, 1032:16, 1036:15, 1039:16, 1041:21, 1042:17, 1043:23, 1044:14, 1046:13, 1113:11, 1113:18, 1114:10, 1123:6, 1123:9, 1123:16, 1123:24, 1124:6, 1242:1, 1242:6, 1242:7</p> <p>expertise [1] - 1052:11</p> <p>experts [3] - 1043:15, 1051:7, 1115:12</p> <p>explain [24] - 1121:18, 1126:10, 1126:23, 1127:4, 1127:15, 1128:3, 1129:19, 1136:10, 1136:11, 1139:19, 1144:10, 1169:3, 1171:21, 1171:24, 1173:10, 1207:16, 1225:1, 1243:14, 1260:11, 1264:25, 1283:8, 1284:22, 1290:4</p> <p>explained [2] - 1178:1, 1227:6</p> <p>explanation [3] - 1035:13, 1072:16, 1121:3</p> <p>explanations [1] - 1137:21</p> <p>expressed [2] - 1171:10, 1205:25</p> <p>extended [2] - 1075:22, 1225:5</p> <p>extent [8] - 1034:24, 1041:20, 1046:19, 1064:15, 1105:1, 1143:24, 1157:19, 1169:6</p> <p>external [1] - 1125:18</p> <p>extra [2] - 1158:11, 1218:2</p> <p style="text-align: center;">F</p> <p>face [4] - 1196:24, 1216:10, 1231:5, 1231:7</p> <p>faces [1] - 1206:18</p> <p>facets [2] - 1200:7, 1200:10</p> <p>facility [4] - 1117:13, 1153:1, 1248:19, 1249:15</p> <p>fact [80] - 1034:21, 1039:22, 1041:23, 1042:16, 1070:9, 1074:4, 1074:11, 1075:4, 1075:7, 1076:13, 1076:16, 1076:25, 1077:3, 1079:1, 1086:1, 1090:23, 1097:13, 1099:22, 1101:6, 1102:17, 1107:21, 1109:11, 1110:2, 1110:3, 1110:15, 1114:13, 1141:22, 1146:10, 1159:6, 1160:14, 1161:15, 1163:1, 1168:23, 1183:14, 1189:3, 1189:8, 1194:23, 1195:6, 1198:13, 1204:19, 1204:22, 1205:14, 1206:24, 1207:11, 1208:15, 1212:25, 1214:25, 1215:19, 1218:14, 1230:14, 1230:16, 1233:22, 1234:10, 1239:21, 1240:2, 1245:8, 1246:13, 1248:4, 1248:5, 1248:24, 1248:25, 1249:11, 1251:11, 1255:11, 1256:6, 1256:18, 1259:21, 1261:11, 1262:3, 1262:8, 1263:7, 1266:6, 1266:20, 1270:10, 1275:10,</p>
---	---	---

<p>1278:9, 1280:24, 1284:13, 1286:2, 1291:25</p> <p>factor [6] - 1133:22, 1148:15, 1166:3, 1176:20, 1177:8, 1184:14</p> <p>factors [6] - 1126:12, 1133:16, 1133:18, 1133:20, 1178:25</p> <p>facts [2] - 1132:12, 1239:4</p> <p>factual [2] - 1260:12, 1263:12</p> <p>failed [4] - 1115:9, 1165:3, 1183:18, 1243:24</p> <p>failing [1] - 1245:19</p> <p>fails [1] - 1045:19</p> <p>fair [21] - 1064:21, 1066:9, 1078:10, 1084:16, 1085:6, 1093:10, 1093:21, 1094:4, 1094:12, 1096:14, 1134:12, 1167:14, 1176:17, 1186:25, 1187:11, 1215:12, 1219:4, 1219:16, 1240:11, 1275:22, 1289:25</p> <p>fairly [1] - 1167:9</p> <p>fairness [1] - 1144:17</p> <p>faith [3] - 1183:15, 1183:16, 1211:16</p> <p>fall [3] - 1083:9, 1200:7, 1245:18</p> <p>falling [3] - 1130:23, 1175:1</p> <p>false [5] - 1071:25, 1139:25, 1257:14, 1257:16</p> <p>familiar [2] - 1044:6, 1271:15</p> <p>family [8] - 1133:22, 1134:6, 1152:12, 1152:13, 1152:21, 1153:4, 1173:2, 1211:1</p> <p>far [5] - 1132:17, 1133:8, 1231:9, 1252:3, 1284:23</p> <p>fashion [1] - 1231:10</p> <p>fast [1] - 1277:11</p> <p>FDA [4] - 1212:8, 1212:15, 1212:18, 1212:25</p> <p>fear [3] - 1083:23, 1166:9, 1174:22</p> <p>fearful [1] - 1166:8</p> <p>features [1] - 1063:21</p> <p>February [3] - 1063:13, 1063:20, 1065:22</p> <p>Fed [2] - 1086:1, 1290:18</p> <p>federal [4] - 1123:9, 1191:19, 1212:21, 1251:22</p> <p>fee [1] - 1121:7</p> <p>feet [2] - 1090:21, 1214:9</p> <p>Felipe [1] - 1269:2</p> <p>fellowship [1] - 1117:22</p> <p>felon [1] - 1060:3</p> <p>felony [6] - 1057:10, 1057:11, 1057:24, 1058:1, 1058:18, 1058:20</p> <p>felt [4] - 1066:9, 1096:4, 1106:5, 1250:23</p> <p>Fentanyl [1] - 1239:22</p> <p>few [23] - 1058:3, 1074:17, 1088:14, 1097:1, 1104:9, 1118:22, 1124:4, 1131:12, 1137:2, 1141:1, 1141:3, 1144:22, 1186:3, 1235:1, 1243:7, 1254:24, 1254:25, 1257:11, 1270:25, 1285:9, 1288:10, 1291:16</p> <p>fibromyalgia [5] - 1162:8, 1163:10, 1163:14, 1163:15, 1163:16</p> <p>fide [1] - 1196:6</p>	<p>field [2] - 1100:10, 1137:14</p> <p>fight [1] - 1188:7</p> <p>figure [7] - 1031:20, 1129:3, 1162:12, 1171:3, 1214:25, 1232:4, 1293:6</p> <p>file [36] - 1037:3, 1038:14, 1039:1, 1039:3, 1039:6, 1039:13, 1039:21, 1040:2, 1040:20, 1041:2, 1042:2, 1061:23, 1087:15, 1109:5, 1143:12, 1146:15, 1148:20, 1148:23, 1149:10, 1154:8, 1157:13, 1167:14, 1179:14, 1184:12, 1198:3, 1204:16, 1246:2, 1247:6, 1247:8, 1248:20, 1249:14, 1279:11, 1281:23, 1283:3</p> <p>files [50] - 1036:2, 1036:4, 1036:5, 1036:10, 1036:15, 1037:8, 1037:12, 1037:18, 1038:6, 1038:7, 1038:25, 1040:23, 1041:3, 1041:4, 1041:13, 1131:9, 1139:14, 1140:17, 1142:24, 1143:9, 1150:13, 1151:1, 1157:7, 1159:20, 1161:9, 1161:20, 1165:14, 1168:6, 1176:11, 1179:18, 1180:4, 1180:5, 1180:23, 1181:12, 1182:19, 1184:10, 1184:14, 1186:11, 1192:17, 1216:3, 1244:16, 1246:1, 1246:15, 1246:25, 1247:15, 1247:22, 1249:4, 1249:10</p> <p>fill [20] - 1077:23, 1079:16, 1104:13, 1107:11, 1108:25, 1111:13, 1209:14, 1261:6, 1261:23, 1270:17, 1275:19, 1275:21, 1279:19, 1280:6, 1280:15, 1281:1, 1282:11, 1286:18, 1290:16, 1290:18</p> <p>filled [21] - 1062:18, 1062:21, 1062:24, 1100:16, 1105:8, 1108:21, 1108:23, 1112:4, 1261:11, 1270:19, 1275:1, 1275:6, 1280:11, 1281:20, 1282:15, 1285:24, 1286:2, 1286:9, 1286:10, 1288:8, 1290:17</p> <p>filling [6] - 1108:21, 1111:2, 1111:14, 1241:18, 1275:10, 1275:14</p> <p>finally [1] - 1185:7</p> <p>findings [6] - 1127:3, 1167:21, 1168:2, 1168:19, 1168:22, 1171:2</p> <p>fine [5] - 1058:9, 1116:7, 1212:12, 1242:12, 1277:20</p> <p>finish [3] - 1116:24, 1117:5, 1265:14</p> <p>finished [6] - 1061:4, 1091:14, 1116:25, 1117:9, 1119:2, 1266:20</p> <p>finishing [1] - 1178:14</p> <p>fire [1] - 1153:8</p> <p>first [63] - 1031:17, 1032:4, 1052:9, 1053:8, 1055:13, 1055:15, 1060:21, 1063:4, 1064:5, 1074:4, 1077:22, 1080:22, 1082:4, 1085:16, 1090:16, 1104:10, 1104:15, 1104:18, 1104:23, 1105:18, 1115:25, 1116:19, 1122:17, 1123:8, 1124:14, 1131:21, 1142:2, 1158:6, 1159:15, 1169:25, 1173:23, 1174:6, 1174:7, 1182:8, 1201:7, 1214:22, 1215:9, 1215:25, 1217:18, 1222:20, 1243:9, 1250:14, 1254:8, 1255:17, 1256:14, 1256:25, 1257:1, 1267:4, 1267:9, 1268:10, 1268:11,</p>	<p>1269:21, 1269:24, 1273:2, 1276:21, 1280:13, 1281:9, 1281:21, 1281:22, 1286:14, 1286:15, 1287:1, 1287:9</p> <p>fit [3] - 1229:17, 1246:14, 1246:15</p> <p>five [12] - 1037:14, 1037:22, 1052:2, 1052:3, 1056:17, 1105:11, 1105:14, 1108:12, 1161:12, 1168:8, 1276:7, 1276:12</p> <p>fixed [1] - 1096:1</p> <p>flag [2] - 1040:18, 1040:19</p> <p>flight [1] - 1050:5</p> <p>flip [1] - 1125:9</p> <p>fluctuates [1] - 1165:12</p> <p>fluctuation [1] - 1136:1</p> <p>fluid [1] - 1090:14</p> <p>focus [2] - 1244:3, 1244:5</p> <p>focused [4] - 1204:8, 1243:18, 1243:20, 1244:1</p> <p>focuses [1] - 1133:2</p> <p>follow [4] - 1145:2, 1145:3, 1151:7, 1167:23</p> <p>follow-up [1] - 1151:7</p> <p>following [15] - 1031:1, 1056:20, 1071:19, 1073:15, 1113:3, 1114:19, 1114:24, 1163:23, 1177:21, 1178:17, 1241:5, 1242:21, 1262:17, 1263:23, 1292:22</p> <p>follows [4] - 1116:1, 1167:7, 1234:1, 1254:9</p> <p>followup [4] - 1152:19, 1171:11, 1230:17, 1274:11</p> <p>Food [1] - 1212:18</p> <p>fooled [1] - 1189:9</p> <p>foot [1] - 1206:5</p> <p>foregoing [1] - 1295:3</p> <p>forfeited [1] - 1264:4</p> <p>forgery [2] - 1058:15, 1058:20</p> <p>forgot [2] - 1049:11, 1049:19</p> <p>forgotten [1] - 1055:16</p> <p>form [19] - 1111:5, 1111:24, 1128:1, 1129:15, 1129:17, 1155:11, 1157:25, 1159:3, 1159:25, 1160:1, 1163:11, 1170:9, 1201:13, 1209:10, 1230:18, 1262:22, 1263:17, 1273:5</p> <p>former [1] - 1294:6</p> <p>forms [5] - 1111:1, 1111:13, 1112:4, 1152:6, 1290:18</p> <p>formula [1] - 1233:25</p> <p>formulating [1] - 1033:15</p> <p>formulations [1] - 1190:9</p> <p>Fort [4] - 1123:17, 1265:2, 1265:7, 1265:8</p> <p>forth [3] - 1274:10, 1274:16, 1274:21</p> <p>forthcoming [1] - 1082:7</p> <p>forum [1] - 1123:5</p> <p>forward [3] - 1115:1, 1191:8, 1277:11</p> <p>foundation [3] - 1122:3, 1128:17, 1175:13</p> <p>four [4] - 1048:3, 1117:24, 1174:22, 1263:13</p> <p>four-year [1] - 1117:24</p> <p>fourth [1] - 1289:20</p>
--	---	--

<p>framework ^[1] - 1186:18 frankly ^[1] - 1047:23 fraud ^[2] - 1255:7, 1255:8 free ^[2] - 1175:8, 1175:9 freeway ^[2] - 1113:21, 1292:20 freeze ^[1] - 1164:13 frequency ^[1] - 1216:7 frequent ^[1] - 1219:2 frequently ^[3] - 1068:1, 1079:17, 1218:24 Friday ^[17] - 1039:17, 1048:4, 1048:8, 1048:13, 1048:15, 1050:2, 1057:2, 1057:8, 1058:19, 1060:8, 1060:20, 1084:21, 1092:10, 1098:2, 1098:19, 1186:4, 1285:20 front ^[2] - 1208:4, 1268:13 fulfill ^[1] - 1258:24 full ^[3] - 1173:17, 1256:15, 1273:8 full-time ^[1] - 1273:8 fully ^[1] - 1256:24 function ^[23] - 1064:13, 1065:5, 1065:6, 1087:20, 1089:12, 1095:15, 1134:19, 1154:24, 1155:1, 1155:2, 1155:6, 1172:1, 1172:2, 1172:15, 1173:4, 1173:12, 1173:17, 1179:6, 1210:18, 1210:20, 1211:11, 1214:6, 1214:19 functional ^[3] - 1126:4, 1136:8, 1155:4 functionality ^[1] - 1154:22 functioning ^[5] - 1088:1, 1093:18, 1172:25, 1173:5, 1175:19 fundamental ^[1] - 1133:4 fundamentals ^[2] - 1132:7, 1156:1 furthermore ^[1] - 1276:2 future ^[2] - 1126:13, 1181:23</p>	<p>1095:17, 1123:25, 1124:6, 1165:20, 1165:22, 1169:7, 1216:14, 1223:5, 1233:9 glad ^[2] - 1035:25, 1243:24 global ^[1] - 1036:7 globally ^[1] - 1038:4 goal ^[2] - 1136:5, 1214:6 goals ^[2] - 1214:18, 1215:5 God ^[2] - 1115:7, 1254:2 good-faith ^[1] - 1211:16 Government ^[2] - 1030:1, 1268:21 government ^[6] - 1048:1, 1185:24, 1191:19, 1238:19, 1240:6, 1293:5 government's ^[2] - 1103:21, 1198:7 Government's ^[3] - 1104:7, 1108:18, 1109:7 grades ^[1] - 1080:10 graduated ^[1] - 1117:1 Graves ^[2] - 1115:3, 1116:10 GRAVES ^[1] - 1115:24 grew ^[2] - 1119:16 Grocery ^[1] - 1269:8 ground ^[2] - 1072:2, 1073:10 group ^[4] - 1119:14, 1160:7, 1176:21, 1267:19 groups ^[1] - 1158:25 Grove ^[1] - 1086:3 guess ^[5] - 1054:11, 1172:19, 1246:14, 1263:8, 1293:5 guesstimating ^[1] - 1186:6 guide ^[1] - 1032:9 guideline ^[6] - 1163:13, 1193:12, 1203:3, 1211:24, 1233:6, 1259:2 guidelines ^[4] - 1245:7, 1245:9, 1251:22, 1258:9 guides ^[1] - 1122:10 guilty ^[6] - 1255:24, 1256:10, 1256:18, 1260:9, 1260:13, 1261:10 Guitreau ^[4] - 1205:15, 1227:6, 1227:7, 1233:1 Guitreau's ^[1] - 1204:15</p>	<p>1197:6 happy ^[2] - 1043:9, 1071:18 hard ^[5] - 1080:21, 1143:21, 1200:14, 1200:16, 1293:16 hardware ^[1] - 1213:13 harm ^[5] - 1130:23, 1131:7, 1249:20, 1250:5, 1250:8 hat ^[2] - 1129:1, 1157:9 hate ^[2] - 1048:4 head ^[4] - 1052:21, 1123:23, 1202:5, 1270:10 head-on ^[1] - 1052:21 healed ^[2] - 1173:8, 1173:11 health ^[8] - 1133:1, 1177:9, 1180:6, 1180:13, 1183:12, 1218:1, 1218:11, 1219:4 Health ^[1] - 1117:10 healthcare ^[1] - 1255:8 healthy ^[1] - 1199:4 hear ^[3] - 1054:3, 1121:2, 1272:6 heard ^[9] - 1040:4, 1109:21, 1111:24, 1113:24, 1126:8, 1128:11, 1195:23, 1248:24, 1283:25 hearing ^[1] - 1038:5 hearings ^[1] - 1124:10 hearsay ^[1] - 1036:13 heated ^[2] - 1099:10, 1099:11 heavy ^[3] - 1133:23, 1171:19, 1172:4 held ^[17] - 1031:1, 1056:20, 1071:19, 1073:15, 1113:3, 1114:19, 1114:24, 1122:22, 1163:23, 1177:21, 1178:17, 1241:5, 1242:21, 1262:17, 1263:23, 1279:8, 1292:22 help ^[23] - 1075:2, 1091:8, 1095:6, 1115:7, 1125:25, 1129:16, 1137:3, 1138:10, 1162:21, 1166:11, 1171:3, 1174:13, 1200:3, 1201:16, 1201:18, 1202:4, 1205:1, 1218:18, 1219:24, 1254:2, 1290:23 helped ^[1] - 1101:3 helpful ^[2] - 1175:16, 1175:17 helping ^[1] - 1130:4 helps ^[3] - 1122:3, 1129:23, 1225:3 herniations ^[1] - 1168:1 herself ^[2] - 1271:19, 1272:9 high ^[16] - 1070:8, 1070:10, 1070:25, 1106:5, 1129:10, 1135:18, 1158:12, 1158:13, 1173:23, 1180:25, 1199:7, 1217:25, 1218:10, 1262:10, 1288:17 higher ^[7] - 1065:4, 1129:3, 1176:21, 1181:8, 1181:9, 1251:10, 1251:11 highlighting ^[1] - 1083:3 highly ^[1] - 1160:19 hint ^[1] - 1178:2 Hippocratic ^[3] - 1248:13, 1249:17, 1249:19 hired ^[1] - 1192:16 historical ^[5] - 1161:11, 1161:22, 1161:24, 1168:7, 1168:13 history ^[31] - 1038:13, 1049:4, 1057:10, 1070:8, 1077:24, 1109:21, 1126:24, 1132:12, 1133:22, 1137:23,</p>
G		
<p>gained ^[2] - 1130:11, 1258:15 gains ^[1] - 1258:16 Gardner ^[11] - 1039:18, 1238:18, 1238:19, 1239:6, 1247:13, 1248:4, 1248:12, 1248:21, 1249:7, 1249:18, 1249:23 gas ^[2] - 1124:25 gather ^[3] - 1033:18, 1034:20, 1185:15 gathered ^[1] - 1051:24 gathering ^[1] - 1209:21 gears ^[1] - 1156:14 general ^[6] - 1059:8, 1070:15, 1070:16, 1121:11, 1122:15, 1224:22 generally ^[4] - 1116:14, 1173:8, 1212:5, 1212:13 generate ^[1] - 1290:9 generator ^[1] - 1227:16 generic ^[1] - 1127:17 genetic ^[1] - 1130:16 gentlemen ^[7] - 1056:22, 1114:20, 1116:9, 1190:16, 1194:6, 1254:19, 1292:24 Gessner ^[1] - 1270:4 given ^[12] - 1071:24, 1081:13, 1095:3,</p>	H	
	<p>half ^[6] - 1045:22, 1047:7, 1048:3, 1101:15, 1243:4 hallway ^[1] - 1114:11 hammer ^[4] - 1124:19, 1124:22, 1125:5, 1125:16 hand ^[8] - 1039:22, 1137:19, 1152:14, 1152:23, 1154:15, 1230:17, 1253:24, 1280:13 handed ^[1] - 1285:4 handle ^[3] - 1040:19, 1133:4, 1282:5 handled ^[4] - 1040:6, 1041:1, 1153:22, 1196:15 handling ^[2] - 1080:25, 1293:12 hands ^[7] - 1061:17, 1090:21, 1091:6, 1152:11, 1202:9, 1203:9, 1248:7 hands-on ^[1] - 1061:17 handwrite ^[1] - 1082:17 handwritten ^[1] - 1079:4, 1082:5</p>	

<p>1138:2, 1138:13, 1139:5, 1139:6, 1139:9, 1139:10, 1140:13, 1140:14, 1145:14, 1148:3, 1149:19, 1150:7, 1163:9, 1168:7, 1184:2, 1204:5, 1209:7, 1209:13, 1209:17, 1235:6, 1276:3</p> <p>hit [1] - 1039:15</p> <p>hobbies [1] - 1173:3</p> <p>hold [1] - 1178:18</p> <p>holding [1] - 1031:4</p> <p>home [12] - 1055:21, 1066:17, 1066:20, 1067:8, 1067:10, 1067:11, 1067:22, 1089:10, 1106:13, 1124:24, 1125:10, 1139:22</p> <p>honest [3] - 1081:3, 1081:8, 1082:6</p> <p>honesty [1] - 1080:10</p> <p>Honor [79] - 1031:10, 1031:18, 1032:8, 1032:15, 1033:1, 1033:8, 1033:24, 1034:4, 1035:17, 1035:25, 1036:9, 1037:4, 1038:8, 1038:21, 1039:12, 1042:12, 1042:19, 1044:14, 1044:20, 1046:2, 1047:6, 1051:9, 1053:2, 1054:19, 1054:22, 1055:14, 1055:19, 1055:24, 1056:13, 1056:16, 1059:3, 1059:14, 1076:4, 1096:20, 1103:22, 1104:3, 1108:14, 1112:15, 1112:17, 1112:21, 1113:9, 1114:15, 1115:3, 1115:13, 1115:14, 1115:23, 1163:20, 1164:1, 1164:3, 1164:20, 1177:17, 1177:24, 1178:16, 1180:1, 1185:13, 1185:17, 1188:10, 1222:14, 1222:18, 1222:25, 1240:9, 1241:1, 1242:25, 1250:18, 1252:14, 1252:18, 1252:23, 1253:8, 1253:15, 1253:18, 1260:4, 1262:13, 1263:21, 1268:18, 1268:22, 1271:21, 1292:16, 1293:1, 1294:21</p> <p>hoped [1] - 1036:1</p> <p>hoping [2] - 1173:15, 1293:17</p> <p>Horizon [1] - 1267:18</p> <p>horse [1] - 1200:7</p> <p>hospital [1] - 1087:11</p> <p>hour [13] - 1035:23, 1042:10, 1042:24, 1045:22, 1046:2, 1046:3, 1047:7, 1047:13, 1085:8, 1115:18</p> <p>hours [5] - 1042:21, 1048:3, 1067:23, 1266:15, 1266:17</p> <p>house [1] - 1189:1</p> <p>Houston [15] - 1114:5, 1116:23, 1117:10, 1117:12, 1123:12, 1159:6, 1159:9, 1159:10, 1159:15, 1258:17, 1260:18, 1265:9, 1265:10, 1265:13, 1269:17</p> <p>human [2] - 1128:8, 1175:10</p> <p>hundred [8] - 1034:11, 1038:15, 1125:1, 1125:3, 1125:7, 1140:2, 1288:22</p> <p>hundreds [3] - 1036:16, 1182:25, 1288:8</p> <p>hurricane [1] - 1085:25</p> <p>hurt [5] - 1090:2, 1138:5, 1138:6, 1143:21</p> <p>hurting [2] - 1064:10, 1174:23</p> <p>hurts [3] - 1090:3, 1090:4, 1093:18</p>	<p>hydro [1] - 1134:2</p> <p>hydrocodone [18] - 1127:17, 1127:19, 1127:22, 1128:1, 1128:6, 1150:6, 1158:1, 1158:10, 1158:17, 1159:11, 1159:12, 1159:16, 1160:2, 1162:25, 1261:3, 1261:12, 1271:2, 1274:20</p> <p>hyperalgesia [1] - 1163:6</p> <p>hyperalgia [1] - 1162:9</p> <p>hypervigilant [1] - 1166:5</p> <p style="text-align: center;">I</p> <p>I's [1] - 1125:11</p> <p>I-10 [1] - 1114:4</p> <p>idea [5] - 1100:9, 1156:4, 1198:6, 1234:20, 1275:13</p> <p>identification [1] - 1082:23</p> <p>identified [3] - 1143:1, 1271:19, 1272:9</p> <p>identify [3] - 1125:24, 1137:3, 1283:16</p> <p>ignorance [2] - 1044:19, 1045:10</p> <p>ignored [2] - 1045:8, 1231:5</p> <p>ignores [1] - 1045:16</p> <p>II [4] - 1150:5, 1150:18, 1157:4, 1261:2</p> <p>III [1] - 1261:1</p> <p>ill [1] - 1258:16</p> <p>ill-gotten [1] - 1258:16</p> <p>illegal [5] - 1039:11, 1136:16, 1147:8, 1147:14, 1223:17</p> <p>Illinois [2] - 1058:16, 1059:23</p> <p>illness [1] - 1138:13</p> <p>imbalance [1] - 1133:6</p> <p>immediate [2] - 1122:24, 1274:19</p> <p>imminent [1] - 1183:11</p> <p>impeach [2] - 1034:25, 1053:23</p> <p>impeached [2] - 1034:24, 1049:1</p> <p>impeaching [1] - 1035:1</p> <p>impeachment [4] - 1035:11, 1049:16, 1049:17, 1053:20</p> <p>implanted [1] - 1213:13</p> <p>implanting [2] - 1218:14, 1218:17</p> <p>implemented [2] - 1064:22, 1221:25</p> <p>imply [1] - 1171:21</p> <p>implying [1] - 1213:6</p> <p>importance [2] - 1130:9, 1274:17</p> <p>important [18] - 1040:8, 1126:21, 1131:5, 1135:4, 1135:7, 1151:8, 1151:10, 1156:6, 1157:12, 1157:14, 1181:10, 1181:19, 1199:22, 1214:6, 1238:10, 1238:13, 1269:13, 1279:17</p> <p>imposed [1] - 1058:7</p> <p>impression [3] - 1111:14, 1111:23, 1111:24</p> <p>improper [3] - 1154:11, 1188:12, 1262:21</p> <p>improve [4] - 1201:22, 1201:24, 1214:18, 1223:10</p> <p>improved [1] - 1135:22</p> <p>improvement [3] - 1136:8, 1155:4, 1182:16</p> <p>improves [1] - 1120:7</p>	<p>impulse [1] - 1133:24</p> <p>inability [3] - 1130:18, 1131:6, 1137:3</p> <p>inaccuracies [1] - 1139:24</p> <p>inaccurate [1] - 1220:23</p> <p>inadequate [5] - 1145:13, 1145:14, 1149:19</p> <p>inadequately [1] - 1150:6</p> <p>incident [2] - 1176:25, 1177:3</p> <p>incidentally [1] - 1108:20</p> <p>include [9] - 1121:19, 1127:22, 1134:7, 1158:1, 1158:16, 1235:3, 1235:6, 1235:20, 1244:14</p> <p>included [1] - 1033:9</p> <p>includes [2] - 1127:7, 1127:11</p> <p>including [7] - 1071:25, 1106:10, 1107:4, 1110:18, 1246:25, 1255:6, 1294:3</p> <p>incomplete [1] - 1169:14</p> <p>inconsistent [1] - 1246:20</p> <p>incorporated [1] - 1145:19</p> <p>increase [27] - 1067:8, 1067:14, 1067:18, 1067:25, 1068:1, 1068:6, 1072:12, 1072:22, 1073:23, 1076:15, 1078:17, 1079:1, 1093:23, 1098:1, 1098:2, 1099:7, 1099:14, 1099:17, 1100:1, 1158:13, 1251:15, 1270:21, 1271:8, 1287:16, 1287:20, 1288:4, 1288:7</p> <p>increased [7] - 1064:18, 1067:3, 1072:15, 1073:24, 1076:25, 1151:23, 1207:13</p> <p>increases [3] - 1155:2, 1181:9, 1250:7</p> <p>incumbent [1] - 1155:10</p> <p>independent [1] - 1267:22</p> <p>indicate [5] - 1110:12, 1146:21, 1154:24, 1156:16, 1165:7</p> <p>indicated [23] - 1066:17, 1066:18, 1071:17, 1103:16, 1106:6, 1106:13, 1106:21, 1106:25, 1109:9, 1109:17, 1110:10, 1110:23, 1148:6, 1151:21, 1155:8, 1156:22, 1160:25, 1161:15, 1167:15, 1168:5, 1172:2, 1257:24, 1269:15</p> <p>indicates [2] - 1067:7, 1154:23</p> <p>indicating [3] - 1080:24, 1087:14, 1105:19</p> <p>indication [23] - 1107:8, 1141:22, 1142:21, 1147:4, 1147:23, 1148:9, 1152:14, 1152:17, 1154:8, 1154:13, 1156:24, 1156:25, 1161:20, 1162:17, 1163:10, 1164:25, 1165:16, 1166:14, 1171:18, 1179:13, 1213:15, 1248:21, 1249:8</p> <p>indications [6] - 1149:14, 1161:10, 1184:12, 1212:6, 1212:13, 1213:10</p> <p>indicia [4] - 1051:17, 1053:25, 1196:6, 1198:9</p> <p>indictment [7] - 1039:9, 1255:2, 1255:19, 1256:3, 1256:6, 1256:7, 1258:4</p> <p>indictments [1] - 1258:5</p> <p>individual [14] - 1034:3, 1036:19, 1037:8, 1038:18, 1040:25, 1041:1,</p>
--	---	---

<p>1080:11, 1082:13, 1147:9, 1200:12, 1201:5, 1215:22, 1228:4, 1239:18 individualized [1] - 1040:22 individually [2] - 1036:14, 1038:3 induced [2] - 1162:8, 1163:6 inflame [1] - 1163:1 inform [1] - 1252:25 information [39] - 1043:19, 1051:23, 1060:25, 1061:6, 1062:3, 1063:22, 1064:3, 1064:17, 1065:13, 1066:3, 1081:4, 1081:14, 1081:15, 1086:20, 1086:21, 1088:24, 1089:9, 1089:19, 1090:7, 1093:7, 1094:13, 1145:20, 1149:6, 1192:25, 1196:19, 1204:15, 1209:21, 1222:7, 1226:20, 1226:22, 1226:23, 1227:18, 1230:22, 1232:21, 1238:8, 1257:14, 1258:1, 1291:21, 1292:3 informed [8] - 1221:5, 1222:6, 1222:13, 1223:19, 1223:23, 1224:1, 1235:24, 1287:23 ingredient [1] - 1245:17 inherently [1] - 1129:7 inherits [1] - 1181:24 initial [3] - 1107:17, 1209:9, 1281:18 injecting [11] - 1039:23, 1040:18, 1053:6, 1152:10, 1152:13, 1153:6, 1154:1, 1154:21, 1163:8, 1248:15, 1263:2 injection [7] - 1154:4, 1154:15, 1170:1, 1170:14, 1216:20, 1219:6, 1248:7 injections [8] - 1156:2, 1170:7, 1205:1, 1218:21, 1219:1, 1219:3, 1219:6, 1227:10 injuries [6] - 1078:22, 1161:11, 1161:25, 1168:17, 1209:13 injury [9] - 1061:10, 1077:24, 1119:25, 1172:9, 1173:9, 1173:11, 1209:7, 1209:17, 1213:12 injustice [3] - 1175:3, 1175:4, 1175:7 input [2] - 1171:3, 1214:13 inquired [1] - 1230:21 inquiry [1] - 1046:20 inspector [5] - 1081:18, 1082:12, 1082:24 Inspector [5] - 1083:8, 1083:14, 1083:20, 1084:1, 1084:17 instance [2] - 1041:25, 1228:15 instances [4] - 1037:9, 1046:11, 1147:19, 1171:9 instead [1] - 1122:2 Institute [1] - 1119:9 instructed [1] - 1253:12 instruction [2] - 1044:18, 1044:19 instruments [1] - 1141:10 insufficient [1] - 1041:23 insurance [4] - 1216:25, 1217:5, 1217:7, 1219:4 Insurance [2] - 1120:13, 1120:20 integrated [3] - 1147:24, 1148:11, 1149:21 integrity [1] - 1080:10</p>	<p>intending [1] - 1066:17 intense [2] - 1133:15, 1166:24 intensity [2] - 1205:23, 1206:11 intensive [1] - 1166:10 intent [6] - 1043:23, 1043:24, 1044:9, 1045:1, 1057:17, 1273:6 intention [1] - 1048:12 intentionally [1] - 1241:25 Inter [3] - 1270:1, 1270:2, 1270:3 interaction [1] - 1176:3 interactions [1] - 1211:4 interest [1] - 1125:12 interested [3] - 1038:4, 1038:24, 1069:8 internal [1] - 1117:15 internship [1] - 1117:15 intervals [3] - 1228:4, 1230:8, 1230:9 interventional [3] - 1170:5, 1170:14, 1218:25 interventionally [1] - 1170:6 interview [10] - 1082:15, 1082:23, 1083:7, 1252:3, 1281:24, 1282:23, 1283:6, 1283:10, 1283:17, 1284:9 interviewed [8] - 1081:20, 1081:23, 1082:11, 1084:17, 1285:7, 1286:23, 1287:7 interviews [1] - 1257:10 intoxicated [1] - 1130:24 introduce [1] - 1048:5 invasion [1] - 1174:4 investigation [1] - 1165:25 invited [1] - 1265:4 involved [8] - 1060:23, 1066:23, 1067:2, 1091:24, 1191:16, 1191:24, 1197:25, 1204:25 involves [2] - 1121:6, 1205:22 involving [1] - 1058:25 irrelevant [1] - 1203:5 irritate [1] - 1163:1 IRS [2] - 1125:11, 1134:10 Isaza [3] - 1204:25, 1205:11, 1205:14 ISAZA [1] - 1204:25 issue [22] - 1043:10, 1043:22, 1044:9, 1044:21, 1044:25, 1049:15, 1049:16, 1049:23, 1054:6, 1055:14, 1055:15, 1070:12, 1070:24, 1075:8, 1076:18, 1157:4, 1184:15, 1193:25, 1199:8, 1219:12, 1259:22, 1263:7 issues [21] - 1034:13, 1051:10, 1060:18, 1060:19, 1074:16, 1075:20, 1078:4, 1078:14, 1082:7, 1093:22, 1133:7, 1162:11, 1171:6, 1171:22, 1174:18, 1176:22, 1190:25, 1203:10, 1210:10, 1244:6 itself [2] - 1177:8, 1181:5</p>	<p>Jason [12] - 1085:17, 1285:2, 1285:9, 1285:17, 1286:17, 1286:22, 1286:25, 1287:10, 1287:21, 1290:5 Jeff [1] - 1037:13 job [1] - 1073:8 Johnny [2] - 1295:3, 1295:7 joint [2] - 1219:5, 1219:6 Josephine [1] - 1042:7 Joubert [3] - 1164:19, 1241:9, 1242:23 JOUBERT [139] - 1031:10, 1031:17, 1031:25, 1032:4, 1032:8, 1032:15, 1033:1, 1033:5, 1033:8, 1033:20, 1033:24, 1034:4, 1035:17, 1035:19, 1035:25, 1036:6, 1036:9, 1037:4, 1038:8, 1038:10, 1038:21, 1038:23, 1039:5, 1039:12, 1039:14, 1039:20, 1040:1, 1040:5, 1040:9, 1040:11, 1041:6, 1041:12, 1041:16, 1042:12, 1042:19, 1044:20, 1044:24, 1047:6, 1054:22, 1055:13, 1055:16, 1055:19, 1055:24, 1056:4, 1056:8, 1056:13, 1056:16, 1059:3, 1059:14, 1068:3, 1076:4, 1096:20, 1096:23, 1098:18, 1099:3, 1103:22, 1103:23, 1104:3, 1104:5, 1104:17, 1104:20, 1105:4, 1106:3, 1108:14, 1108:15, 1111:9, 1112:15, 1112:21, 1113:5, 1113:9, 1113:18, 1114:5, 1114:15, 1114:18, 1115:2, 1115:14, 1115:20, 1115:23, 1116:3, 1163:20, 1164:1, 1164:3, 1164:20, 1164:21, 1177:23, 1178:13, 1178:15, 1178:20, 1180:1, 1180:3, 1185:11, 1188:10, 1188:12, 1194:13, 1241:11, 1241:14, 1241:16, 1241:20, 1241:24, 1242:4, 1242:9, 1242:11, 1242:17, 1242:25, 1243:2, 1250:18, 1250:20, 1252:13, 1252:18, 1252:22, 1253:8, 1253:11, 1253:15, 1253:18, 1254:11, 1260:4, 1260:5, 1262:20, 1263:10, 1263:13, 1263:15, 1263:21, 1264:1, 1268:16, 1268:22, 1268:23, 1271:21, 1272:3, 1272:5, 1272:7, 1292:16, 1293:16, 1293:21, 1293:25, 1294:3, 1294:6, 1294:9, 1294:12, 1294:21 Joubert's [1] - 1057:9 Journal [1] - 1121:10 journal [1] - 1121:12 judge [6] - 1069:9, 1072:11, 1076:2, 1085:7, 1241:23, 1259:10 Judge [40] - 1031:12, 1040:12, 1041:13, 1047:10, 1047:15, 1047:23, 1048:11, 1048:22, 1049:2, 1049:8, 1049:21, 1049:23, 1050:14, 1051:3, 1054:7, 1056:9, 1057:4, 1059:16, 1063:15, 1072:7, 1072:8, 1072:18, 1073:3, 1073:11, 1073:16, 1082:20, 1082:22, 1096:18, 1098:15, 1098:25, 1104:14, 1104:24, 1111:3, 1112:25, 1113:5, 1241:24, 1263:10, 1293:2, 1293:16, 1294:1 July [5] - 1256:19, 1280:9, 1280:14, 1283:12, 1285:22</p>
J		
	<p>January [9] - 1079:23, 1271:7, 1271:11, 1275:25, 1277:2, 1277:12, 1277:25, 1284:12 January - 1172:9</p>	

<p>jumped ^[1] - 1042:9 juries ^[1] - 1161:15 juror's ^[1] - 1050:4 JURORS ^[2] - 1056:23, 1056:25 jurors ^[1] - 1040:4 jury ^[109] - 1031:1, 1037:8, 1037:23, 1042:15, 1045:9, 1049:3, 1049:13, 1053:7, 1053:8, 1053:14, 1056:20, 1057:8, 1058:4, 1073:15, 1074:1, 1077:9, 1078:7, 1082:8, 1098:8, 1098:12, 1099:7, 1114:19, 1114:24, 1116:9, 1116:20, 1118:12, 1119:2, 1119:22, 1120:3, 1120:22, 1121:23, 1123:8, 1124:15, 1126:8, 1126:9, 1126:23, 1127:4, 1127:15, 1128:13, 1128:21, 1129:12, 1130:13, 1133:18, 1134:5, 1134:13, 1137:13, 1137:21, 1139:8, 1139:19, 1142:12, 1143:15, 1145:5, 1146:10, 1156:6, 1157:12, 1158:6, 1162:2, 1163:23, 1165:24, 1166:25, 1169:3, 1170:2, 1170:22, 1173:10, 1174:3, 1174:17, 1175:18, 1178:17, 1179:7, 1179:12, 1180:12, 1182:5, 1184:20, 1188:9, 1189:25, 1190:16, 1194:6, 1225:1, 1228:14, 1241:5, 1242:2, 1242:21, 1243:10, 1243:15, 1243:25, 1254:19, 1263:5, 1263:23, 1264:15, 1264:16, 1264:25, 1265:19, 1265:21, 1266:18, 1267:16, 1271:5, 1275:9, 1275:13, 1276:21, 1282:3, 1283:8, 1284:1, 1284:22, 1288:2, 1288:15, 1289:14, 1290:4, 1292:22 jury's ^[2] - 1073:20, 1128:11 justify ^[1] - 1243:22 juxtaposed ^[1] - 1243:12</p>	<p>1248:18, 1293:4, 1293:16 kinds ^[5] - 1120:7, 1136:21, 1139:21, 1150:8, 1170:3 Kirkwood ^[2] - 1269:22, 1270:4 knees ^[1] - 1206:9 knocks ^[1] - 1206:8 knowingly ^[1] - 1262:8 knowledge ^[4] - 1033:14, 1102:7, 1102:13, 1289:11 known ^[5] - 1045:7, 1117:3, 1159:6, 1160:18, 1219:22</p>	<p>1113:11, 1140:18, 1155:9, 1157:25, 1159:22, 1165:16, 1165:18, 1166:20, 1180:5, 1201:18, 1206:15, 1209:5, 1211:16, 1213:15, 1237:8, 1238:4, 1249:9, 1265:20, 1266:16, 1266:24, 1271:10, 1274:3, 1284:23, 1286:15, 1290:1 leave ^[1] - 1178:11 leaves ^[1] - 1045:9 lectured ^[1] - 1123:3 led ^[1] - 1255:12 left ^[6] - 1080:22, 1090:11, 1118:22, 1259:23, 1267:5, 1267:24 leg ^[1] - 1167:6 legal ^[5] - 1059:4, 1109:16, 1136:16, 1263:2, 1263:5 legally ^[1] - 1282:15 legible ^[2] - 1181:16, 1181:19 legitimate ^[11] - 1150:22, 1154:17, 1180:21, 1184:9, 1185:5, 1185:9, 1247:18, 1251:15, 1261:14, 1262:4, 1262:5 length ^[3] - 1050:15, 1072:25, 1091:19 less ^[9] - 1042:21, 1047:23, 1089:6, 1108:5, 1133:21, 1241:6, 1249:24, 1250:10, 1277:5 letter ^[2] - 1039:22, 1125:10 level ^[28] - 1061:19, 1064:4, 1065:2, 1065:14, 1068:22, 1069:14, 1086:18, 1086:25, 1087:3, 1088:21, 1089:1, 1093:17, 1097:22, 1133:14, 1133:15, 1134:15, 1143:11, 1143:25, 1151:22, 1156:16, 1156:22, 1156:23, 1162:18, 1172:15, 1176:15, 1176:18, 1246:17, 1258:9 levels ^[4] - 1094:21, 1156:17, 1215:15, 1259:3 license ^[2] - 1118:22, 1265:21 licensed ^[4] - 1103:9, 1118:3, 1260:18, 1266:16 licensure ^[2] - 1118:15, 1118:16 lied ^[1] - 1084:16 lies ^[1] - 1034:22 life ^[12] - 1122:1, 1122:4, 1129:23, 1129:24, 1173:17, 1173:18, 1188:7, 1215:6, 1215:11, 1223:11, 1223:18, 1264:22 lifetime ^[1] - 1109:16 light ^[1] - 1170:15 likely ^[1] - 1152:17 limber ^[1] - 1201:21 limit ^[2] - 1042:14, 1052:5 limited ^[6] - 1034:17, 1054:13, 1121:15, 1121:16, 1190:3, 1224:15 limits ^[1] - 1219:7 Line ^[1] - 1223:10 line ^[12] - 1032:12, 1074:7, 1076:14, 1078:6, 1078:8, 1173:23, 1174:6, 1174:7, 1177:18, 1280:5, 1280:14, 1280:16 lines ^[1] - 1197:15 list ^[3] - 1161:5, 1162:13, 1235:3 literally ^[1] - 1095:10</p>
<p>K</p> <p>Kansas ^[1] - 1123:14 Keecoo ^[2] - 1123:20, 1123:21 keep ^[10] - 1047:7, 1054:8, 1129:19, 1130:23, 1130:24, 1146:1, 1190:12, 1198:13, 1202:4, 1207:24 keeping ^[2] - 1091:2, 1201:25 kept ^[1] - 1197:12 key ^[1] - 1269:20 kick ^[1] - 1143:21 kidding ^[2] - 1055:23, 1293:20 kidney ^[1] - 1223:12 kill ^[2] - 1085:7, 1154:3 Kimberly ^[7] - 1059:25, 1148:21, 1155:8, 1156:15, 1156:22, 1162:15, 1250:13 KIMBERLY ^[1] - 1057:5 kind ^[30] - 1033:13, 1039:15, 1048:8, 1048:10, 1055:5, 1089:19, 1111:18, 1120:4, 1121:5, 1133:5, 1134:4, 1135:17, 1137:7, 1137:16, 1138:11, 1139:21, 1158:8, 1164:16, 1166:5, 1166:6, 1167:4, 1168:11, 1168:15, 1184:2, 1200:7, 1214:19, 1225:22,</p>	<p>L</p> <p>lab ^[6] - 1195:21, 1195:23, 1220:25, 1221:2, 1235:15, 1235:17 label ^[3] - 1212:8, 1212:16, 1290:10 labels ^[3] - 1213:1, 1213:5, 1290:14 labor ^[1] - 1067:12 laboratories ^[2] - 1195:14, 1220:14 laboratory ^[4] - 1140:1, 1194:19, 1195:2, 1195:10 lack ^[7] - 1036:21, 1036:22, 1037:16, 1148:4, 1154:10, 1171:18, 1183:22 ladies ^[6] - 1056:21, 1114:20, 1116:8, 1190:16, 1194:5, 1254:19 lady ^[3] - 1271:19, 1272:9, 1292:24 Lane ^[1] - 1270:3 language ^[12] - 1043:7, 1043:17, 1059:4, 1160:15, 1193:7, 1193:15, 1193:25, 1211:21, 1225:18, 1231:19, 1260:11 Lantern ^[1] - 1270:3 lapse ^[1] - 1265:22 large ^[1] - 1261:18 last ^[27] - 1047:25, 1071:11, 1071:16, 1071:21, 1097:5, 1116:11, 1123:17, 1128:22, 1130:6, 1154:20, 1168:20, 1173:24, 1174:2, 1175:6, 1186:4, 1254:18, 1256:19, 1258:1, 1260:8, 1260:17, 1263:10, 1265:20, 1265:24, 1266:16, 1269:18, 1277:19, 1283:8 lastly ^[3] - 1251:25, 1259:6, 1264:2 lasts ^[2] - 1225:21, 1225:22 late ^[3] - 1270:18, 1270:20, 1271:13 latitude ^[1] - 1046:12 law ^[6] - 1044:14, 1194:15, 1236:24, 1237:4, 1261:21, 1283:22 Laws ^[1] - 1278:13 laws ^[1] - 1280:20 lawyer ^[2] - 1035:5, 1259:14 lawyers ^[5] - 1031:3, 1035:5, 1036:17, 1241:22, 1292:21 lay ^[1] - 1203:9 layman's ^[2] - 1169:4, 1225:4 lead ^[1] - 1177:14 leading ^[1] - 1262:14 leads ^[1] - 1174:23 Leal ^[1] - 1094:9 learn ^[3] - 1122:1, 1128:19, 1266:8 learned ^[1] - 1053:10 least ^[3] - 1000:8, 1100:13, 1113:10</p>	<p>length ^[3] - 1050:15, 1072:25, 1091:19 less ^[9] - 1042:21, 1047:23, 1089:6, 1108:5, 1133:21, 1241:6, 1249:24, 1250:10, 1277:5 letter ^[2] - 1039:22, 1125:10 level ^[28] - 1061:19, 1064:4, 1065:2, 1065:14, 1068:22, 1069:14, 1086:18, 1086:25, 1087:3, 1088:21, 1089:1, 1093:17, 1097:22, 1133:14, 1133:15, 1134:15, 1143:11, 1143:25, 1151:22, 1156:16, 1156:22, 1156:23, 1162:18, 1172:15, 1176:15, 1176:18, 1246:17, 1258:9 levels ^[4] - 1094:21, 1156:17, 1215:15, 1259:3 license ^[2] - 1118:22, 1265:21 licensed ^[4] - 1103:9, 1118:3, 1260:18, 1266:16 licensure ^[2] - 1118:15, 1118:16 lied ^[1] - 1084:16 lies ^[1] - 1034:22 life ^[12] - 1122:1, 1122:4, 1129:23, 1129:24, 1173:17, 1173:18, 1188:7, 1215:6, 1215:11, 1223:11, 1223:18, 1264:22 lifetime ^[1] - 1109:16 light ^[1] - 1170:15 likely ^[1] - 1152:17 limber ^[1] - 1201:21 limit ^[2] - 1042:14, 1052:5 limited ^[6] - 1034:17, 1054:13, 1121:15, 1121:16, 1190:3, 1224:15 limits ^[1] - 1219:7 Line ^[1] - 1223:10 line ^[12] - 1032:12, 1074:7, 1076:14, 1078:6, 1078:8, 1173:23, 1174:6, 1174:7, 1177:18, 1280:5, 1280:14, 1280:16 lines ^[1] - 1197:15 list ^[3] - 1161:5, 1162:13, 1235:3 literally ^[1] - 1095:10</p>

<p>literature [4] - 1128:17, 1129:5, 1155:3, 1168:20</p> <p>litigation [2] - 1052:12, 1054:14</p> <p>live [1] - 1265:4</p> <p>living [3] - 1059:22, 1172:22, 1265:5</p> <p>local [1] - 1257:2</p> <p>location [2] - 1061:19, 1269:6</p> <p>locked [3] - 1293:19, 1293:22, 1293:23</p> <p>long-acting [5] - 1224:21, 1225:2, 1225:11, 1225:18, 1225:21</p> <p>long-term [2] - 1202:14, 1225:4</p> <p>longest [1] - 1107:17</p> <p>look [51] - 1032:9, 1032:13, 1036:16, 1041:13, 1055:2, 1067:6, 1071:17, 1076:13, 1078:6, 1083:2, 1083:4, 1083:18, 1105:18, 1106:12, 1106:23, 1128:16, 1129:22, 1131:22, 1131:24, 1133:11, 1133:13, 1133:16, 1136:24, 1138:1, 1156:1, 1156:6, 1163:11, 1172:11, 1173:3, 1176:7, 1186:5, 1186:10, 1186:13, 1186:15, 1186:18, 1186:21, 1192:17, 1192:21, 1196:3, 1198:3, 1210:1, 1222:3, 1224:9, 1227:13, 1231:19, 1231:23, 1237:5, 1244:5, 1278:7, 1278:8, 1290:14</p> <p>looked [22] - 1033:25, 1034:8, 1035:15, 1041:3, 1041:4, 1045:14, 1155:3, 1155:4, 1159:20, 1183:4, 1186:12, 1186:24, 1197:11, 1197:14, 1206:24, 1222:5, 1235:18, 1235:24, 1240:6, 1278:10, 1278:11, 1278:21</p> <p>looking [13] - 1038:3, 1065:15, 1134:19, 1134:22, 1136:7, 1157:23, 1192:18, 1192:22, 1192:25, 1230:20, 1231:4, 1244:16</p> <p>looks [2] - 1292:14, 1294:16</p> <p>loosen [1] - 1095:13</p> <p>Lorcet [1] - 1160:1</p> <p>Lortab [4] - 1062:9, 1111:20, 1158:17, 1160:1</p> <p>losing [1] - 1200:2</p> <p>loss [2] - 1136:4, 1199:21</p> <p>lost [14] - 1037:23, 1042:18, 1042:20, 1073:22, 1074:5, 1074:6, 1074:7, 1074:11, 1074:12, 1090:24, 1136:20, 1154:2, 1154:5, 1156:19</p> <p>lotto [3] - 1125:1, 1125:4</p> <p>loudly [1] - 1031:8</p> <p>Louisiana [20] - 1055:20, 1057:12, 1057:18, 1086:2, 1097:21, 1101:22, 1112:22, 1147:15, 1261:17, 1278:3, 1278:4, 1278:12, 1278:22, 1284:18, 1284:20, 1288:9, 1290:6, 1292:7, 1293:18</p> <p>love [1] - 1091:1</p> <p>low [10] - 1129:13, 1129:14, 1129:15, 1129:17, 1138:4, 1139:10, 1161:2, 1183:9, 1244:4, 1244:6</p> <p>lower [3] - 1089:25, 1094:16, 1259:1</p> <p>lowered [1] - 1251:9</p> <p>lumber [2] - 1089:24, 1089:25</p> <p>lunch [2] - 1163:22, 1164:22</p> <p>Lupus [19] - 1074:19, 1074:24</p>	<p>1074:24, 1075:3, 1075:9, 1076:18, 1076:20, 1078:9, 1078:14, 1078:18, 1078:19, 1092:7, 1092:18, 1162:7, 1162:16, 1162:21, 1163:1, 1210:14</p> <p>LVN [1] - 1103:7</p> <p style="text-align: center;">M</p> <p>ma'am [71] - 1112:18, 1186:3, 1186:9, 1186:12, 1187:10, 1187:20, 1188:2, 1188:5, 1189:2, 1189:4, 1189:12, 1189:24, 1190:6, 1190:11, 1190:15, 1190:22, 1191:10, 1191:15, 1191:18, 1191:21, 1191:23, 1191:25, 1192:8, 1192:24, 1194:22, 1194:25, 1195:12, 1195:16, 1195:24, 1196:2, 1196:5, 1196:11, 1196:14, 1196:17, 1197:5, 1197:8, 1199:11, 1199:18, 1199:20, 1201:3, 1202:7, 1202:11, 1204:18, 1205:4, 1206:13, 1210:12, 1211:3, 1211:6, 1211:8, 1211:18, 1212:2, 1212:17, 1212:20, 1212:24, 1213:9, 1214:4, 1214:8, 1214:12, 1215:2, 1215:18, 1215:21, 1216:9, 1216:21, 1217:23, 1221:8, 1225:20, 1228:20, 1229:11, 1230:19, 1238:9, 1238:17</p> <p>mad [1] - 1074:10</p> <p>magnify [3] - 1134:11, 1171:6, 1175:23</p> <p>mail [5] - 1237:12, 1255:7, 1278:12, 1284:6, 1291:17</p> <p>maintain [4] - 1244:20, 1245:3, 1261:22, 1266:12</p> <p>maintained [1] - 1198:16</p> <p>maintaining [1] - 1244:14</p> <p>major [1] - 1117:7</p> <p>majority [5] - 1119:17, 1141:2, 1182:9, 1182:18, 1286:2</p> <p>makeup [1] - 1128:5</p> <p>maladaptive [4] - 1171:5, 1174:20, 1175:21, 1175:23</p> <p>Malik [2] - 1063:6, 1063:7</p> <p>malpractice [1] - 1188:1</p> <p>man [1] - 1188:6</p> <p>manage [5] - 1126:3, 1153:16, 1153:18, 1154:7, 1210:13</p> <p>managed [2] - 1064:1, 1162:22</p> <p>management [55] - 1052:10, 1054:1, 1079:14, 1096:15, 1097:7, 1117:20, 1117:21, 1118:14, 1118:20, 1119:4, 1119:14, 1120:1, 1123:4, 1124:10, 1126:2, 1126:15, 1126:20, 1131:18, 1133:8, 1136:7, 1139:24, 1155:3, 1169:8, 1172:10, 1172:23, 1179:20, 1187:1, 1187:8, 1187:17, 1190:21, 1190:24, 1191:12, 1199:13, 1199:22, 1202:10, 1204:13, 1204:24, 1210:4, 1218:12, 1221:15, 1221:16, 1221:17, 1222:12, 1224:10, 1233:3, 1243:14, 1245:1, 1245:14, 1245:15, 1251:21, 1273:3, 1273:14</p> <p>Management [1] - 1118:11</p>	<p>managing [4] - 1073:8, 1126:15, 1210:9, 1210:10</p> <p>manmade [2] - 1127:13, 1127:23</p> <p>Mann [13] - 1060:24, 1061:5, 1062:3, 1077:24, 1091:13, 1092:3, 1092:6, 1102:22, 1103:4, 1106:1, 1107:25, 1281:15</p> <p>manufactured [1] - 1220:19</p> <p>map [2] - 1167:10, 1233:25</p> <p>maps [1] - 1167:7</p> <p>March [5] - 1064:25, 1066:3, 1080:14, 1080:18, 1178:5</p> <p>Marian [2] - 1082:12, 1082:25</p> <p>marijuana [12] - 1146:5, 1146:9, 1146:13, 1146:15, 1146:19, 1146:23, 1146:25, 1147:2, 1147:8, 1220:7, 1245:17, 1245:21</p> <p>mark [3] - 1163:18, 1248:7</p> <p>marked [1] - 1082:22</p> <p>marketplace [1] - 1033:17</p> <p>marks [2] - 1045:13, 1154:15</p> <p>Mary [1] - 1220:5</p> <p>mass [1] - 1140:2</p> <p>massage [14] - 1061:7, 1091:5, 1095:5, 1102:8, 1102:18, 1112:11, 1141:14, 1141:18, 1142:1, 1142:3, 1142:6, 1142:7, 1252:6, 1252:11</p> <p>Mathern [4] - 1246:25, 1247:8, 1247:21, 1249:19</p> <p>MATHERN [1] - 1247:10</p> <p>matter [15] - 1031:2, 1035:24, 1039:4, 1040:7, 1042:6, 1048:6, 1049:14, 1051:19, 1053:17, 1070:21, 1147:15, 1212:15, 1225:23, 1271:24, 1295:5</p> <p>matters [1] - 1264:4</p> <p>maximizing [1] - 1050:9</p> <p>maximum [3] - 1261:24, 1291:5, 1291:7</p> <p>McDonald [7] - 1149:11, 1149:14, 1229:1, 1246:12, 1246:14, 1247:21, 1249:18</p> <p>MD [5] - 1052:16, 1052:18, 1052:22, 1055:4, 1076:14</p> <p>mean [24] - 1033:3, 1034:18, 1038:1, 1038:16, 1041:9, 1045:8, 1045:16, 1048:25, 1054:8, 1100:13, 1107:16, 1111:19, 1122:16, 1127:22, 1137:14, 1139:19, 1148:9, 1191:6, 1192:10, 1206:19, 1232:4, 1234:18, 1239:2, 1239:3</p> <p>mean [2] - 1058:5, 1111:17</p> <p>meaning [3] - 1039:10, 1099:18, 1187:22</p> <p>meaningful [4] - 1145:22, 1182:16, 1184:23, 1215:20</p> <p>means [16] - 1042:10, 1045:15, 1118:12, 1118:13, 1120:22, 1135:17, 1143:20, 1148:2, 1160:23, 1164:6, 1164:10, 1170:14, 1189:25, 1190:1, 1244:1, 1244:2</p> <p>meant [3] - 1164:4, 1187:23, 1266:11</p> <p>measure [6] - 1046:13, 1046:14, 1046:16, 1077:13, 1136:6, 1142:17</p>
---	--	---

<p>mechanics [1] - 1142:17</p> <p>mechanisms [5] - 1133:3, 1171:5, 1174:20, 1175:21, 1175:23</p> <p>Medicaid [6] - 1217:13, 1217:18, 1217:20, 1217:21, 1217:25, 1218:6</p> <p>medical [92] - 1034:18, 1036:22, 1043:13, 1051:17, 1051:18, 1053:25, 1060:24, 1061:5, 1073:25, 1074:16, 1078:4, 1088:12, 1100:3, 1100:10, 1103:13, 1108:18, 1116:16, 1116:20, 1116:22, 1117:9, 1119:15, 1120:12, 1121:1, 1122:11, 1122:13, 1131:9, 1133:11, 1134:18, 1137:23, 1138:21, 1139:5, 1139:6, 1139:9, 1140:22, 1141:13, 1142:24, 1144:9, 1144:21, 1145:6, 1145:8, 1145:25, 1146:2, 1150:7, 1150:10, 1150:19, 1150:23, 1154:17, 1156:13, 1157:7, 1168:7, 1168:13, 1180:18, 1180:19, 1180:20, 1180:21, 1181:20, 1182:4, 1183:17, 1183:25, 1184:9, 1184:23, 1185:2, 1185:5, 1185:9, 1188:1, 1188:21, 1197:7, 1197:12, 1208:2, 1213:10, 1214:2, 1220:5, 1220:9, 1223:4, 1226:7, 1228:3, 1230:11, 1235:6, 1235:14, 1244:14, 1245:25, 1246:23, 1247:4, 1247:18, 1250:25, 1251:1, 1252:4, 1261:14, 1262:4, 1262:5, 1276:3</p> <p>Medical [33] - 1046:24, 1116:23, 1117:23, 1123:25, 1187:7, 1187:16, 1191:22, 1192:6, 1193:6, 1193:10, 1194:4, 1202:21, 1203:5, 1207:18, 1208:1, 1208:4, 1208:6, 1209:22, 1210:16, 1211:16, 1211:21, 1212:4, 1213:19, 1213:21, 1221:7, 1225:19, 1226:11, 1228:2, 1230:24, 1234:7, 1235:1, 1240:17, 1251:20</p> <p>medically [2] - 1251:25, 1252:1</p> <p>Medicare [4] - 1217:10, 1217:16, 1217:18, 1217:19</p> <p>medicate [2] - 1166:9, 1176:23</p> <p>medication [57] - 1046:23, 1047:22, 1066:10, 1075:5, 1075:16, 1075:24, 1077:1, 1078:16, 1079:9, 1081:6, 1081:13, 1087:9, 1087:10, 1087:16, 1088:1, 1092:25, 1093:22, 1097:15, 1097:17, 1098:23, 1099:6, 1100:1, 1106:6, 1106:24, 1111:16, 1111:18, 1122:5, 1126:3, 1129:4, 1137:1, 1162:9, 1165:1, 1178:3, 1204:23, 1205:15, 1210:4, 1212:15, 1218:14, 1221:15, 1225:11, 1231:2, 1237:20, 1239:7, 1247:25, 1248:4, 1248:10, 1248:18, 1281:25, 1283:15, 1283:18, 1288:18, 1288:19, 1289:3, 1289:4</p> <p>medications [29] - 1062:15, 1062:17, 1062:18, 1062:21, 1062:25, 1063:9, 1065:10, 1068:9, 1076:15, 1080:24, 1080:25, 1081:2, 1094:7, 1094:8, 1097:11, 1127:8, 1132:1, 1133:11, 1182:12, 1208:20, 1208:22, 1208:25, 1209:17, 1226:4, 1231:14, 1236:4,</p>	<p>1247:17, 1250:12, 1278:4</p> <p>medicine [39] - 1032:1, 1046:15, 1052:24, 1053:2, 1053:12, 1081:2, 1117:15, 1118:4, 1121:9, 1121:11, 1121:14, 1137:22, 1140:13, 1149:24, 1149:25, 1157:3, 1183:4, 1183:20, 1184:6, 1184:7, 1184:8, 1190:13, 1190:17, 1190:18, 1190:20, 1190:25, 1192:11, 1202:20, 1219:17, 1220:1, 1225:9, 1225:23, 1237:5, 1240:12, 1251:19, 1273:5, 1273:7</p> <p>Medicine [2] - 1121:10, 1121:13</p> <p>medicines [5] - 1089:4, 1127:16, 1137:5, 1155:25, 1274:22</p> <p>meds [3] - 1136:20, 1209:2, 1209:3</p> <p>meet [3] - 1041:10, 1088:16, 1262:10</p> <p>meeting [4] - 1062:7, 1086:11, 1091:13, 1110:8</p> <p>meetings [2] - 1110:16, 1220:6</p> <p>member [10] - 1119:18, 1120:12, 1120:16, 1122:19, 1152:12, 1152:13, 1152:21, 1153:5, 1221:21, 1238:15</p> <p>members [7] - 1093:7, 1093:8, 1093:11, 1182:4, 1203:24, 1221:19, 1224:19</p> <p>Memorial [1] - 1270:4</p> <p>memory [2] - 1049:6, 1049:7</p> <p>men [1] - 1033:11</p> <p>men's [1] - 1056:9</p> <p>mental [3] - 1133:1, 1177:9, 1218:1</p> <p>mention [2] - 1172:20, 1221:9</p> <p>mentioned [21] - 1035:20, 1088:6, 1092:20, 1147:17, 1149:18, 1166:19, 1170:20, 1171:16, 1172:18, 1174:18, 1186:1, 1210:25, 1224:21, 1227:25, 1236:19, 1238:18, 1243:25, 1258:5, 1274:25, 1275:5, 1280:25</p> <p>mentioning [1] - 1046:22</p> <p>met [9] - 1066:7, 1082:4, 1086:17, 1088:19, 1092:2, 1188:19, 1276:22, 1276:24, 1277:22</p> <p>Methern [1] - 1247:8</p> <p>method [1] - 1182:11</p> <p>microphone [2] - 1254:5, 1254:14</p> <p>mid [2] - 1060:12, 1129:4</p> <p>middle [2] - 1067:7, 1207:6</p> <p>might [25] - 1031:6, 1033:12, 1034:8, 1042:21, 1066:22, 1079:8, 1081:12, 1113:20, 1132:3, 1132:13, 1132:14, 1145:10, 1161:7, 1162:20, 1176:22, 1192:10, 1196:12, 1200:3, 1200:23, 1207:13, 1216:19, 1216:20, 1233:16, 1233:19, 1241:6</p> <p>mild [3] - 1143:6, 1176:14, 1176:17</p> <p>miles [1] - 1182:25</p> <p>military [1] - 1122:6</p> <p>mill [4] - 1032:3, 1032:7, 1032:10, 1184:16</p> <p>milligram [3] - 1067:4, 1069:3, 1094:15</p> <p>milligrams [9] - 1039:11, 1062:9, 1065:20, 1065:22, 1066:5, 1067:15, 1068:7, 1184:4</p>	<p>million [3] - 1125:1, 1125:4, 1125:7</p> <p>million-dollar [2] - 1125:1, 1125:4</p> <p>mind [10] - 1070:12, 1098:8, 1098:12, 1098:22, 1192:18, 1203:5, 1232:17, 1250:23, 1251:11, 1274:17</p> <p>mindset [1] - 1192:22</p> <p>mine [1] - 1083:4</p> <p>minimal [2] - 1183:9, 1245:7</p> <p>minimally [2] - 1110:15, 1245:13</p> <p>minimize [1] - 1201:18</p> <p>minimum [18] - 1193:14, 1202:25, 1203:4, 1203:6, 1208:6, 1208:9, 1213:24, 1214:1, 1226:22, 1243:12, 1244:11, 1244:12, 1245:3, 1245:8, 1245:22, 1246:3, 1246:8, 1246:9</p> <p>minor [1] - 1128:8</p> <p>minus [2] - 1170:18, 1171:22</p> <p>minute [8] - 1056:8, 1097:25, 1103:3, 1119:22, 1121:19, 1147:17, 1187:4, 1219:12</p> <p>minutes [19] - 1037:15, 1056:17, 1084:2, 1088:15, 1091:18, 1091:23, 1107:18, 1107:25, 1108:5, 1108:12, 1108:13, 1114:14, 1114:21, 1131:13, 1241:14, 1254:25, 1257:11, 1292:18</p> <p>misanswered [1] - 1217:17</p> <p>misdemeanor [3] - 1059:12, 1059:15, 1060:1</p> <p>misdemeanors [1] - 1058:24</p> <p>mispronounced [1] - 1120:22</p> <p>misreading [1] - 1118:1</p> <p>missing [1] - 1037:18</p> <p>misstatement [2] - 1104:15, 1104:22</p> <p>misuse [2] - 1112:1, 1126:12</p> <p>misused [1] - 1155:14</p> <p>misusing [3] - 1079:9, 1081:12, 1250:7</p> <p>mitigate [2] - 1145:21, 1166:10</p> <p>Mobic [3] - 1094:8, 1158:21, 1159:2</p> <p>modalities [1] - 1174:17</p> <p>model [2] - 1169:13, 1169:17</p> <p>moderate [3] - 1170:15, 1176:14, 1176:17</p> <p>moment [5] - 1185:17, 1222:14, 1234:25, 1240:9, 1272:17</p> <p>Monday [5] - 1048:2, 1256:19, 1258:2, 1260:18, 1285:20</p> <p>monetary [1] - 1121:7</p> <p>money [14] - 1073:23, 1099:17, 1099:18, 1099:19, 1125:10, 1125:13, 1184:11, 1195:17, 1287:23, 1291:17, 1291:18, 1291:21</p> <p>monitoring [5] - 1184:4, 1187:3, 1236:20, 1236:25, 1237:2</p> <p>month [21] - 1060:2, 1064:25, 1105:17, 1155:13, 1228:8, 1228:9, 1229:23, 1230:1, 1230:2, 1230:4, 1246:17, 1270:25, 1271:10, 1278:5, 1280:3, 1288:9</p> <p>monthly [1] - 1151:3</p> <p>months [30] - 1077:14, 1101:19, 1101:24, 1104:9, 1104:23, 1131:8,</p>
---	--	---

<p>1151:5, 1151:9, 1151:18, 1151:23, 1173:8, 1173:11, 1173:20, 1214:25, 1215:3, 1228:8, 1228:11, 1228:12, 1228:16, 1228:17, 1228:18, 1228:23, 1229:9, 1229:12, 1229:22, 1280:4, 1287:24, 1288:6, 1288:11</p> <p>mood [6] - 1103:16, 1105:19, 1148:7, 1148:14, 1148:19, 1211:9</p> <p>moral [2] - 1058:25, 1059:17</p> <p>morning [11] - 1056:21, 1056:23, 1077:5, 1086:7, 1088:19, 1096:24, 1096:25, 1115:10, 1116:4, 1116:5, 1292:18</p> <p>most [19] - 1037:9, 1047:7, 1085:13, 1089:16, 1090:3, 1090:4, 1129:15, 1144:21, 1169:5, 1174:20, 1186:23, 1199:12, 1214:6, 1228:23, 1261:16, 1273:22, 1281:5, 1285:24, 1286:19</p> <p>mostly [2] - 1058:11, 1091:15</p> <p>motion [20] - 1140:24, 1141:1, 1141:2, 1141:4, 1141:5, 1141:8, 1141:16, 1141:19, 1141:21, 1141:23, 1142:1, 1142:4, 1142:8, 1142:15, 1142:17, 1142:22, 1145:16, 1151:16, 1201:23, 1202:1</p> <p>motivation [2] - 1175:25, 1176:8</p> <p>motor [2] - 1130:24, 1197:22</p> <p>Motrin [1] - 1094:1</p> <p>mouth [1] - 1044:3</p> <p>move [7] - 1071:7, 1073:1, 1155:22, 1178:11, 1254:15, 1258:3, 1269:12</p> <p>moved [1] - 1065:21</p> <p>moving [1] - 1174:23</p> <p>MR [202] - 1031:10, 1031:17, 1031:25, 1032:4, 1032:8, 1032:15, 1032:23, 1033:1, 1033:5, 1033:8, 1033:20, 1033:24, 1034:4, 1035:17, 1035:19, 1035:25, 1036:6, 1036:9, 1037:4, 1038:8, 1038:10, 1038:21, 1038:23, 1039:5, 1039:12, 1039:14, 1039:20, 1040:1, 1040:9, 1040:11, 1041:6, 1041:12, 1041:16, 1042:12, 1042:19, 1044:20, 1044:24, 1047:6, 1047:10, 1047:15, 1047:19, 1047:21, 1048:11, 1048:18, 1048:21, 1049:2, 1049:8, 1049:20, 1049:23, 1050:2, 1050:14, 1050:24, 1051:3, 1054:7, 1054:22, 1055:13, 1055:16, 1055:19, 1055:24, 1056:4, 1056:8, 1056:13, 1056:16, 1057:4, 1057:7, 1059:3, 1059:9, 1059:10, 1059:14, 1059:16, 1059:19, 1063:15, 1063:17, 1068:3, 1068:5, 1069:9, 1069:12, 1071:9, 1072:7, 1072:11, 1072:18, 1073:3, 1073:11, 1073:13, 1073:16, 1073:18, 1076:2, 1076:4, 1076:7, 1082:19, 1082:22, 1083:1, 1084:20, 1094:19, 1096:18, 1096:20, 1096:23, 1098:15, 1098:18, 1098:25, 1099:3, 1103:22, 1103:23, 1104:3, 1104:5, 1104:14, 1104:17, 1104:18, 1104:20, 1104:21, 1105:4, 1106:3, 1108:14, 1108:15, 1111:3, 1111:9, 1112:15, 1112:21, 1112:25,</p>	<p>1113:5, 1113:9, 1113:14, 1113:18, 1113:22, 1113:25, 1114:4, 1114:5, 1114:6, 1114:10, 1114:15, 1114:18, 1115:2, 1115:14, 1115:20, 1115:23, 1116:3, 1163:20, 1164:1, 1164:3, 1164:20, 1164:21, 1177:23, 1178:13, 1178:15, 1178:20, 1180:1, 1180:3, 1185:11, 1188:10, 1188:12, 1194:13, 1241:11, 1241:14, 1241:16, 1241:20, 1241:23, 1241:24, 1242:4, 1242:9, 1242:11, 1242:17, 1242:25, 1243:2, 1250:18, 1250:20, 1252:13, 1252:18, 1252:22, 1253:8, 1253:11, 1253:15, 1253:18, 1254:11, 1260:4, 1260:5, 1262:20, 1263:10, 1263:13, 1263:15, 1263:21, 1264:1, 1268:16, 1268:22, 1268:23, 1271:21, 1272:3, 1272:5, 1272:7, 1292:16, 1293:2, 1293:4, 1293:10, 1293:14, 1293:16, 1293:21, 1293:25, 1294:3, 1294:6, 1294:9, 1294:12, 1294:19, 1294:21</p> <p>MRI [4] - 1101:17, 1101:24, 1145:10, 1276:11</p> <p>MRIs [3] - 1226:25, 1274:2, 1274:10</p> <p>MS [58] - 1032:16, 1032:19, 1034:16, 1035:18, 1043:1, 1043:6, 1043:13, 1043:22, 1044:2, 1044:5, 1044:8, 1044:13, 1045:24, 1046:2, 1046:6, 1046:8, 1051:9, 1051:15, 1051:22, 1052:8, 1052:17, 1052:19, 1052:23, 1053:2, 1053:11, 1053:21, 1053:24, 1054:6, 1054:11, 1054:13, 1054:17, 1054:19, 1054:21, 1055:7, 1072:3, 1114:2, 1115:13, 1177:17, 1178:4, 1185:17, 1185:19, 1188:11, 1188:14, 1194:17, 1222:14, 1222:17, 1222:21, 1222:24, 1223:2, 1240:9, 1240:10, 1241:1, 1242:14, 1262:13, 1262:24, 1263:1, 1268:18, 1293:1</p> <p>multiple [6] - 1093:11, 1137:15, 1137:17, 1162:7, 1166:23, 1280:1</p> <p>multisite [7] - 1160:22, 1160:24, 1161:1, 1161:4, 1162:2, 1162:4, 1166:19</p> <p>muscle [9] - 1095:11, 1095:14, 1174:24, 1176:2, 1201:20, 1201:22, 1201:24, 1201:25, 1203:10</p> <p>muscles [7] - 1091:6, 1101:2, 1176:1, 1200:3, 1201:10, 1201:17, 1201:21</p> <p>must [6] - 1187:12, 1187:13, 1187:22, 1187:23, 1220:7, 1251:19</p>	<p>narcotic [13] - 1140:9, 1150:5, 1172:4, 1173:13, 1173:25, 1180:12, 1247:17, 1247:25, 1255:7, 1266:9, 1280:2, 1281:1, 1289:17</p> <p>narcotics [14] - 1110:3, 1110:8, 1111:21, 1111:25, 1146:20, 1147:3, 1150:4, 1150:18, 1157:5, 1171:19, 1173:15, 1176:19, 1223:21, 1283:23</p> <p>narrow [1] - 1054:13</p> <p>narrowly [1] - 1052:6</p> <p>nasty [1] - 1125:10</p> <p>natural [1] - 1127:22</p> <p>naturally [1] - 1127:24</p> <p>nature [10] - 1082:15, 1143:6, 1171:11, 1180:15, 1205:22, 1205:25, 1206:3, 1206:9, 1275:24, 1289:1</p> <p>navigating [1] - 1232:3</p> <p>near [2] - 1089:25, 1269:6</p> <p>necessarily [7] - 1042:2, 1126:17, 1171:25, 1176:4, 1181:3, 1181:5, 1271:24</p> <p>necessary [7] - 1036:25, 1066:9, 1132:19, 1138:15, 1152:7, 1170:24, 1282:2</p> <p>necessity [12] - 1121:1, 1144:1, 1146:1, 1146:2, 1150:10, 1150:19, 1156:13, 1180:20, 1180:21, 1184:24, 1185:2, 1246:23</p> <p>neck [8] - 1061:18, 1089:25, 1090:4, 1161:2, 1164:15, 1202:2, 1202:3, 1202:6</p> <p>need [42] - 1031:2, 1031:4, 1031:21, 1036:19, 1037:9, 1042:14, 1043:6, 1047:9, 1047:10, 1047:15, 1048:25, 1049:6, 1051:6, 1089:5, 1106:5, 1113:6, 1115:18, 1115:20, 1122:1, 1122:4, 1124:25, 1132:6, 1140:7, 1155:19, 1155:22, 1171:10, 1173:21, 1179:9, 1212:11, 1219:2, 1241:12, 1241:24, 1243:3, 1243:5, 1243:16, 1244:4, 1260:1, 1268:18, 1283:15</p> <p>needed [8] - 1065:11, 1068:13, 1093:25, 1097:14, 1136:2, 1139:17, 1272:14, 1279:11</p> <p>needing [1] - 1070:25</p> <p>needle [1] - 1045:13</p> <p>needles [2] - 1218:22, 1218:24</p> <p>needs [2] - 1181:24, 1228:5</p> <p>negative [1] - 1124:21</p> <p>negatively [1] - 1205:11</p> <p>negatives [1] - 1139:25</p> <p>negligence [2] - 1043:8, 1211:25</p> <p>negligent [2] - 1045:17</p> <p>nerve [6] - 1090:11, 1145:16, 1167:4, 1167:5, 1167:7, 1169:21</p> <p>nerves [1] - 1218:17</p> <p>nervous [2] - 1166:7, 1166:12</p> <p>neurological [4] - 1132:15, 1145:16, 1149:20, 1150:8</p> <p>neuropathic [1] - 1123:1</p> <p>never [16] - 1051:5, 1051:7, 1079:16, 1080:21, 1101:13, 1101:14, 1101:18, 1106:22, 1108:2, 1110:4, 1110:25,</p>
N		
<p>name [19] - 1070:21, 1113:21, 1116:8, 1116:11, 1119:7, 1123:19, 1149:11, 1162:15, 1204:24, 1229:2, 1246:12, 1247:5, 1247:7, 1254:18, 1277:19, 1288:19, 1288:21</p> <p>named [2] - 1255:2, 1285:2</p> <p>names [4] - 1180:9, 1186:7, 1239:18, 1275:16</p>		

<p>1168:16, 1171:14, 1188:15, 1188:19 nevertheless [2] - 1150:6, 1153:14 new [9] - 1072:2, 1131:21, 1137:25, 1155:13, 1179:9, 1193:17, 1230:21, 1262:9, 1292:14 New [2] - 1264:18, 1264:20 newer [1] - 1237:21 news [1] - 1057:1 next [22] - 1048:2, 1050:6, 1053:10, 1055:17, 1063:12, 1064:23, 1064:25, 1066:7, 1066:14, 1071:10, 1071:14, 1106:4, 1114:22, 1154:4, 1221:5, 1228:1, 1228:9, 1253:14, 1269:7, 1273:13, 1273:19 nicotine [1] - 1133:23 nine [1] - 1186:6 nobody [2] - 1084:15, 1200:18 non [1] - 1070:2 noncancer [1] - 1174:10 none [4] - 1041:5, 1043:25, 1169:18, 1184:8 nonevidence [1] - 1129:11 nonevidenced [1] - 1173:23 nonnarcotic [1] - 1094:3 nonopioid [1] - 1094:5 nonopioids [1] - 1094:10 nonprofit [1] - 1120:9 nonresponsiveness [1] - 1069:10 nonspecific [6] - 1143:6, 1167:21, 1168:2, 1168:15, 1168:22, 1176:15 nontherapeutic [10] - 1135:21, 1149:23, 1149:25, 1150:10, 1150:19, 1178:23, 1180:15, 1180:16, 1180:19, 1182:12 nontherapeutically [2] - 1145:24, 1184:4 normal [3] - 1086:9, 1172:15, 1177:3 normalizes [1] - 1135:20 normally [1] - 1092:2 notes [20] - 1038:13, 1040:5, 1047:24, 1060:7, 1067:6, 1076:14, 1107:7, 1107:14, 1151:21, 1163:25, 1182:4, 1204:19, 1204:21, 1204:22, 1216:13, 1227:3, 1227:6, 1231:2, 1252:4 nothing [14] - 1037:2, 1073:7, 1115:6, 1146:15, 1205:10, 1206:22, 1207:14, 1225:14, 1227:21, 1232:14, 1232:18, 1233:3, 1254:2, 1293:1 notice [7] - 1050:25, 1124:25, 1125:1, 1156:4, 1157:24, 1183:1, 1287:15 noticed [7] - 1154:15, 1182:6, 1197:11, 1199:8, 1206:25, 1243:5, 1270:21 notwithstanding [1] - 1084:1 November [1] - 1078:12 Number [18] - 1043:18, 1044:11, 1058:15, 1059:13, 1064:25, 1066:15, 1068:18, 1071:15, 1079:13, 1080:3, 1104:7, 1106:12, 1106:23, 1108:17, 1109:7, 1109:8, 1109:15, 1163:8 number [47] - 1045:1, 1046:22, 1064:5, 1066:4, 1067:15, 1068:2, 1068:8, 1069:3, 1069:4, 1069:11, 1070:1, 1070:2, 1070:3, 1070:4, 1070:5, 1070:6, 1070:7, 1070:8, 1070:9, 1070:10, 1070:11, 1070:12, 1070:13, 1070:14, 1070:15, 1070:16, 1070:17, 1070:18, 1070:19, 1070:20, 1070:21, 1070:22, 1070:23, 1070:24, 1070:25, 1070:26, 1070:27, 1070:28, 1070:29, 1070:30, 1070:31, 1070:32, 1070:33, 1070:34, 1070:35, 1070:36, 1070:37, 1070:38, 1070:39, 1070:40, 1070:41, 1070:42, 1070:43, 1070:44, 1070:45, 1070:46, 1070:47, 1070:48, 1070:49, 1070:50, 1070:51, 1070:52, 1070:53, 1070:54, 1070:55, 1070:56, 1070:57, 1070:58, 1070:59, 1070:60, 1070:61, 1070:62, 1070:63, 1070:64, 1070:65, 1070:66, 1070:67, 1070:68, 1070:69, 1070:70, 1070:71, 1070:72, 1070:73, 1070:74, 1070:75, 1070:76, 1070:77, 1070:78, 1070:79, 1070:80, 1070:81, 1070:82, 1070:83, 1070:84, 1070:85, 1070:86, 1070:87, 1070:88, 1070:89, 1070:90, 1070:91, 1070:92, 1070:93, 1070:94, 1070:95, 1070:96, 1070:97, 1070:98, 1070:99, 1070:100, 1070:101, 1070:102, 1070:103, 1070:104, 1070:105, 1070:106, 1070:107, 1070:108, 1070:109, 1070:110, 1070:111, 1070:112, 1070:113, 1070:114, 1070:115, 1070:116, 1070:117, 1070:118, 1070:119, 1070:120, 1070:121, 1070:122, 1070:123, 1070:124, 1070:125, 1070:126, 1070:127, 1070:128, 1070:129, 1070:130, 1070:131, 1070:132, 1070:133, 1070:134, 1070:135, 1070:136, 1070:137, 1070:138, 1070:139, 1070:140, 1070:141, 1070:142, 1070:143, 1070:144, 1070:145, 1070:146, 1070:147, 1070:148, 1070:149, 1070:150, 1070:151, 1070:152, 1070:153, 1070:154, 1070:155, 1070:156, 1070:157, 1070:158, 1070:159, 1070:160, 1070:161, 1070:162, 1070:163, 1070:164, 1070:165, 1070:166, 1070:167, 1070:168, 1070:169, 1070:170, 1070:171, 1070:172, 1070:173, 1070:174, 1070:175, 1070:176, 1070:177, 1070:178, 1070:179, 1070:180, 1070:181, 1070:182, 1070:183, 1070:184, 1070:185, 1070:186, 1070:187, 1070:188, 1070:189, 1070:190, 1070:191, 1070:192, 1070:193, 1070:194, 1070:195, 1070:196, 1070:197, 1070:198, 1070:199, 1070:200, 1070:201, 1070:202, 1070:203, 1070:204, 1070:205, 1070:206, 1070:207, 1070:208, 1070:209, 1070:210, 1070:211, 1070:212, 1070:213, 1070:214, 1070:215, 1070:216, 1070:217, 1070:218, 1070:219, 1070:220, 1070:221, 1070:222, 1070:223, 1070:224, 1070:225, 1070:226, 1070:227, 1070:228, 1070:229, 1070:230, 1070:231, 1070:232, 1070:233, 1070:234, 1070:235, 1070:236, 1070:237, 1070:238, 1070:239, 1070:240, 1070:241, 1070:242, 1070:243, 1070:244, 1070:245, 1070:246, 1070:247, 1070:248, 1070:249, 1070:250, 1070:251, 1070:252, 1070:253, 1070:254, 1070:255, 1070:256, 1070:257, 1070:258, 1070:259, 1070:260, 1070:261, 1070:262, 1070:263, 1070:264, 1070:265, 1070:266, 1070:267, 1070:268, 1070:269, 1070:270, 1070:271, 1070:272, 1070:273, 1070:274, 1070:275, 1070:276, 1070:277, 1070:278, 1070:279, 1070:280, 1070:281, 1070:282, 1070:283, 1070:284, 1070:285, 1070:286, 1070:287, 1070:288, 1070:289, 1070:290, 1070:291, 1070:292, 1070:293, 1070:294, 1070:295, 1070:296, 1070:297, 1070:298, 1070:299, 1070:300, 1070:301, 1070:302, 1070:303, 1070:304, 1070:305, 1070:306, 1070:307, 1070:308, 1070:309, 1070:310, 1070:311, 1070:312, 1070:313, 1070:314, 1070:315, 1070:316, 1070:317, 1070:318, 1070:319, 1070:320, 1070:321, 1070:322, 1070:323, 1070:324, 1070:325, 1070:326, 1070:327, 1070:328, 1070:329, 1070:330, 1070:331, 1070:332, 1070:333, 1070:334, 1070:335, 1070:336, 1070:337, 1070:338, 1070:339, 1070:340, 1070:341, 1070:342, 1070:343, 1070:344, 1070:345, 1070:346, 1070:347, 1070:348, 1070:349, 1070:350, 1070:351, 1070:352, 1070:353, 1070:354, 1070:355, 1070:356, 1070:357, 1070:358, 1070:359, 1070:360, 1070:361, 1070:362, 1070:363, 1070:364, 1070:365, 1070:366, 1070:367, 1070:368, 1070:369, 1070:370, 1070:371, 1070:372, 1070:373, 1070:374, 1070:375, 1070:376, 1070:377, 1070:378, 1070:379, 1070:380, 1070:381, 1070:382, 1070:383, 1070:384, 1070:385, 1070:386, 1070:387, 1070:388, 1070:389, 1070:390, 1070:391, 1070:392, 1070:393, 1070:394, 1070:395, 1070:396, 1070:397, 1070:398, 1070:399, 1070:400, 1070:401, 1070:402, 1070:403, 1070:404, 1070:405, 1070:406, 1070:407, 1070:408, 1070:409, 1070:410, 1070:411, 1070:412, 1070:413, 1070:414, 1070:415, 1070:416, 1070:417, 1070:418, 1070:419, 1070:420, 1070:421, 1070:422, 1070:423, 1070:424, 1070:425, 1070:426, 1070:427, 1070:428, 1070:429, 1070:430, 1070:431, 1070:432, 1070:433, 1070:434, 1070:435, 1070:436, 1070:437, 1070:438, 1070:439, 1070:440, 1070:441, 1070:442, 1070:443, 1070:444, 1070:445, 1070:446, 1070:447, 1070:448, 1070:449, 1070:450, 1070:451, 1070:452, 1070:453, 1070:454, 1070:455, 1070:456, 1070:457, 1070:458, 1070:459, 1070:460, 1070:461, 1070:462, 1070:463, 1070:464, 1070:465, 1070:466, 1070:467, 1070:468, 1070:469, 1070:470, 1070:471, 1070:472, 1070:473, 1070:474, 1070:475, 1070:476, 1070:477, 1070:478, 1070:479, 1070:480, 1070:481, 1070:482, 1070:483, 1070:484, 1070:485, 1070:486, 1070:487, 1070:488, 1070:489, 1070:490, 1070:491, 1070:492, 1070:493, 1070:494, 1070:495, 1070:496, 1070:497, 1070:498, 1070:499, 1070:500, 1070:501, 1070:502, 1070:503, 1070:504, 1070:505, 1070:506, 1070:507, 1070:508, 1070:509, 1070:510, 1070:511, 1070:512, 1070:513, 1070:514, 1070:515, 1070:516, 1070:517, 1070:518, 1070:519, 1070:520, 1070:521, 1070:522, 1070:523, 1070:524, 1070:525, 1070:526, 1070:527, 1070:528, 1070:529, 1070:530, 1070:531, 1070:532, 1070:533, 1070:534, 1070:535, 1070:536, 1070:537, 1070:538, 1070:539, 1070:540, 1070:541, 1070:542, 1070:543, 1070:544, 1070:545, 1070:546, 1070:547, 1070:548, 1070:549, 1070:550, 1070:551, 1070:552, 1070:553, 1070:554, 1070:555, 1070:556, 1070:557, 1070:558, 1070:559, 1070:560, 1070:561, 1070:562, 1070:563, 1070:564, 1070:565, 1070:566, 1070:567, 1070:568, 1070:569, 1070:570, 1070:571, 1070:572, 1070:573, 1070:574, 1070:575, 1070:576, 1070:577, 1070:578, 1070:579, 1070:580, 1070:581, 1070:582, 1070:583, 1070:584, 1070:585, 1070:586, 1070:587, 1070:588, 1070:589, 1070:590, 1070:591, 1070:592, 1070:593, 1070:594, 1070:595, 1070:596, 1070:597, 1070:598, 1070:599, 1070:600, 1070:601, 1070:602, 1070:603, 1070:604, 1070:605, 1070:606, 1070:607, 1070:608, 1070:609, 1070:610, 1070:611, 1070:612, 1070:613, 1070:614, 1070:615, 1070:616, 1070:617, 1070:618, 1070:619, 1070:620, 1070:621, 1070:622, 1070:623, 1070:624, 1070:625, 1070:626, 1070:627, 1070:628, 1070:629, 1070:630, 1070:631, 1070:632, 1070:633, 1070:634, 1070:635, 1070:636, 1070:637, 1070:638, 1070:639, 1070:640, 1070:641, 1070:642, 1070:643, 1070:644, 1070:645, 1070:646, 1070:647, 1070:648, 1070:649, 1070:650, 1070:651, 1070:652, 1070:653, 1070:654, 1070:655, 1070:656, 1070:657, 1070:658, 1070:659, 1070:660, 1070:661, 1070:662, 1070:663, 1070:664, 1070:665, 1070:666, 1070:667, 1070:668, 1070:669, 1070:670, 1070:671, 1070:672, 1070:673, 1070:674, 1070:675, 1070:676, 1070:677, 1070:678, 1070:679, 1070:680, 1070:681, 1070:682, 1070:683, 1070:684, 1070:685, 1070:686, 1070:687, 1070:688, 1070:689, 1070:690, 1070:691, 1070:692, 1070:693, 1070:694, 1070:695, 1070:696, 1070:697, 1070:698, 1070:699, 1070:700, 1070:701, 1070:702, 1070:703, 1070:704, 1070:705, 1070:706, 1070:707, 1070:708, 1070:709, 1070:710, 1070:711, 1070:712, 1070:713, 1070:714, 1070:715, 1070:716, 1070:717, 1070:718, 1070:719, 1070:720, 1070:721, 1070:722, 1070:723, 1070:724, 1070:725, 1070:726, 1070:727, 1070:728, 1070:729, 1070:730, 1070:731, 1070:732, 1070:733, 1070:734, 1070:735, 1070:736, 1070:737, 1070:738, 1070:739, 1070:740, 1070:741, 1070:742, 1070:743, 1070:744, 1070:745, 1070:746, 1070:747, 1070:748, 1070:749, 1070:750, 1070:751, 1070:752, 1070:753, 1070:754, 1070:755, 1070:756, 1070:757, 1070:758, 1070:759, 1070:760, 1070:761, 1070:762, 1070:763, 1070:764, 1070:765, 1070:766, 1070:767, 1070:768, 1070:769, 1070:770, 1070:771, 1070:772, 1070:773, 1070:774, 1070:775, 1070:776, 1070:777, 1070:778, 1070:779, 1070:780, 1070:781, 1070:782, 1070:783, 1070:784, 1070:785, 1070:786, 1070:787, 1070:788, 1070:789, 1070:790, 1070:791, 1070:792, 1070:793, 1070:794, 1070:795, 1070:796, 1070:797, 1070:798, 1070:799, 1070:800, 1070:801, 1070:802, 1070:803, 1070:804, 1070:805, 1070:806, 1070:807, 1070:808, 1070:809, 1070:810, 1070:811, 1070:812, 1070:813, 1070:814, 1070:815, 1070:816, 1070:817, 1070:818, 1070:819, 1070:820, 1070:821, 1070:822, 1070:823, 1070:824, 1070:825, 1070:826, 1070:827, 1070:828, 1070:829, 1070:830, 1070:831, 1070:832, 1070:833, 1070:834, 1070:835, 1070:836, 1070:837, 1070:838, 1070:839, 1070:840, 1070:841, 1070:842, 1070:843, 1070:844, 1070:845, 1070:846, 1070:847, 1070:848, 1070:849, 1070:850, 1070:851, 1070:852, 1070:853, 1070:854, 1070:855, 1070:856, 1070:857, 1070:858, 1070:859, 1070:860, 1070:861, 1070:862, 1070:863, 1070:864, 1070:865, 1070:866, 1070:867, 1070:868, 1070:869, 1070:870, 1070:871, 1070:872, 1070:873, 1070:874, 1070:875, 1070:876, 1070:877, 1070:878, 1070:879, 1070:880, 1070:881, 1070:882, 1070:883, 1070:884, 1070:885, 1070:886, 1070:887, 1070:888, 1070:889, 1070:890, 1070:891, 1070:892, 1070:893, 1070:894, 1070:895, 1070:896, 1070:897, 1070:898, 1070:899, 1070:900, 1070:901, 1070:902, 1070:903, 1070:904, 1070:905, 1070:906, 1070:907, 1070:908, 1070:909, 1070:910, 1070:911, 1070:912, 1070:913, 1070:914, 1070:915, 1070:916, 1070:917, 1070:918, 1070:919, 1070:920, 1070:921, 1070:922, 1070:923, 1070:924, 1070:925, 1070:926, 1070:927, 1070:928, 1070:929, 1070:930, 1070:931, 1070:932, 1070:933, 1070:934, 1070:935, 1070:936, 1070:937, 1070:938, 1070:939, 1070:940, 1070:941, 1070:942, 1070:943, 1070:944, 1070:945, 1070:946, 1070:947, 1070:948, 1070:949, 1070:950, 1070:951, 1070:952, 1070:953, 1070:954, 1070:955, 1070:956, 1070:957, 1070:958, 1070:959, 1070:960, 1070:961, 1070:962, 1070:963, 1070:964, 1070:965, 1070:966, 1070:967, 1070:968, 1070:969, 1070:970, 1070:971, 1070:972, 1070:973, 1070:974, 1070:975, 1070:976, 1070:977, 1070:978, 1070:979, 1070:980, 1070:981, 1070:982, 1070:983, 1070:984, 1070:985, 1070:986, 1070:987, 1070:988, 1070:989, 1070:990, 1070:991, 1070:992, 1070:993, 1070:994, 1070:995, 1070:996, 1070:997, 1070:998, 1070:999, 1070:1000</p>	<p>1071:2, 1071:5, 1073:23, 1094:15, 1094:16, 1098:8, 1098:13, 1103:15, 1108:21, 1121:8, 1124:4, 1125:14, 1143:19, 1157:8, 1167:15, 1168:6, 1171:4, 1207:6, 1222:23, 1245:11, 1249:6, 1255:6, 1260:23, 1266:19, 1266:23, 1270:21, 1271:5, 1271:8, 1273:1, 1275:11, 1284:18, 1287:16, 1287:20, 1288:4, 1291:5, 1291:7 numbered [1] - 1230:16 numbers [8] - 1068:20, 1071:25, 1141:11, 1206:18, 1206:19, 1207:9, 1207:14, 1207:17 numbness [1] - 1138:7 nurse [6] - 1060:24, 1092:24, 1103:5, 1103:9, 1198:22 Nursing [2] - 1124:5, 1124:7 nuts [1] - 1212:3</p> <p style="text-align: center;">O</p> <p></p>
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<p>1166:21, 1172:2, 1175:6, 1178:2, 1178:18, 1178:21, 1179:14, 1180:1, 1185:17, 1190:8, 1193:18, 1193:19, 1197:14, 1202:3, 1204:21, 1207:22, 1212:5, 1212:13, 1213:10, 1215:5, 1217:11, 1217:14, 1219:21, 1223:4, 1224:13, 1224:15, 1225:21, 1225:22, 1228:1, 1228:22, 1244:3, 1246:2, 1247:12, 1252:7, 1255:18, 1269:16, 1269:21, 1270:3, 1270:4, 1272:5, 1272:25, 1279:8, 1279:9, 1279:13, 1279:23, 1280:3, 1281:9, 1281:11, 1281:12, 1281:21, 1281:22, 1282:25, 1287:25, 1288:5, 1290:12, 1293:11</p> <p>one's [1] - 1130:19</p> <p>one-year [1] - 1117:25</p> <p>ones [7] - 1048:23, 1049:10, 1094:3, 1131:5, 1139:21, 1186:1, 1202:20</p> <p>ongoing [2] - 1182:1, 1198:16</p> <p>open [1] - 1266:21</p> <p>opened [1] - 1273:3</p> <p>opening [1] - 1178:8</p> <p>operates [1] - 1223:23</p> <p>operating [1] - 1032:7</p> <p>opiates [2] - 1127:6, 1224:24</p> <p>opine [1] - 1217:6</p> <p>opinion [43] - 1031:23, 1031:25, 1033:7, 1033:15, 1034:10, 1034:14, 1034:17, 1034:21, 1035:3, 1035:9, 1035:10, 1035:12, 1035:23, 1036:7, 1037:14, 1039:25, 1040:16, 1044:15, 1046:23, 1051:16, 1055:3, 1063:2, 1063:3, 1063:4, 1111:1, 1111:6, 1129:1, 1149:22, 1150:9, 1160:6, 1181:13, 1182:23, 1183:7, 1183:11, 1192:9, 1192:22, 1244:19, 1244:20, 1245:2, 1245:7, 1246:19, 1249:22, 1251:18</p> <p>opinions [4] - 1033:12, 1131:25, 1192:16, 1220:4</p> <p>opioid [28] - 1070:2, 1118:21, 1121:16, 1121:21, 1127:7, 1127:11, 1127:17, 1127:19, 1127:20, 1153:18, 1153:19, 1159:3, 1162:8, 1162:24, 1163:6, 1176:25, 1189:17, 1190:4, 1204:12, 1212:4, 1212:6, 1212:14, 1213:16, 1225:2, 1225:10, 1225:21, 1239:22, 1247:16</p> <p>OPIOID [1] - 1127:7</p> <p>opioid's [1] - 1127:12</p> <p>opioids [38] - 1127:5, 1127:7, 1127:10, 1127:13, 1127:14, 1128:25, 1129:5, 1129:7, 1129:8, 1131:1, 1131:3, 1158:12, 1158:14, 1163:3, 1163:15, 1163:17, 1166:21, 1174:6, 1176:21, 1180:12, 1180:24, 1191:1, 1191:2, 1191:4, 1192:6, 1198:1, 1202:14, 1205:11, 1212:25, 1213:4, 1222:9, 1223:9, 1223:11, 1224:22, 1224:24, 1233:16, 1274:20</p> <p>opium [1] - 1127:11</p> <p>opoid [1] - 1079:8</p> <p>opportunity [1] - 1093:5</p>	<p>oppose [2] - 1054:23, 1258:8</p> <p>opposed [3] - 1053:20, 1097:17, 1100:7</p> <p>opposing [2] - 1042:23, 1253:5</p> <p>opposite [1] - 1233:22</p> <p>opt [2] - 1217:7, 1217:24</p> <p>opted [4] - 1217:19, 1217:21, 1218:6, 1218:8</p> <p>opting [3] - 1090:12, 1090:13, 1090:15</p> <p>option [4] - 1216:19, 1216:20, 1237:10, 1281:6</p> <p>options [2] - 1135:10, 1213:17</p> <p>order [19] - 1036:11, 1036:25, 1037:20, 1038:25, 1041:17, 1068:2, 1131:18, 1138:14, 1140:15, 1166:11, 1199:3, 1227:25, 1237:11, 1261:22, 1262:9, 1282:18, 1291:17, 1291:18</p> <p>ordered [1] - 1246:3</p> <p>orders [3] - 1184:11, 1261:24, 1291:22</p> <p>organization [3] - 1119:23, 1120:9, 1209:6</p> <p>original [3] - 1256:3, 1256:6, 1258:4</p> <p>originally [3] - 1134:16, 1255:2, 1280:10</p> <p>orthopedic [3] - 1132:14, 1204:25, 1233:2</p> <p>Osman [18] - 1070:20, 1086:12, 1086:17, 1087:3, 1087:15, 1088:10, 1091:21, 1092:23, 1096:7, 1102:3, 1102:13, 1106:1, 1107:23, 1108:24, 1109:2, 1112:8, 1112:9, 1294:4</p> <p>Osmon's [1] - 1102:5</p> <p>otherwise [4] - 1124:6, 1166:5, 1220:8, 1252:21</p> <p>ought [1] - 1032:13</p> <p>ourselves [1] - 1126:1</p> <p>outbreak [4] - 1074:19, 1075:9, 1076:19, 1078:18</p> <p>outcome [4] - 1155:3, 1156:10, 1156:12, 1179:5</p> <p>Outcome [1] - 1119:23</p> <p>outcomes [1] - 1169:2</p> <p>Outcomes [1] - 1119:14</p> <p>outpatient [1] - 1118:20</p> <p>outside [27] - 1031:9, 1031:11, 1089:10, 1095:18, 1095:21, 1096:10, 1097:7, 1113:10, 1150:21, 1154:16, 1164:9, 1164:16, 1180:17, 1183:24, 1184:7, 1184:8, 1185:8, 1188:20, 1194:1, 1235:11, 1240:22, 1245:6, 1245:8, 1247:17, 1253:17, 1261:13, 1262:4</p> <p>overall [4] - 1038:17, 1074:13, 1180:6, 1182:14</p> <p>overdose [3] - 1177:11, 1177:16, 1181:9</p> <p>overruled [5] - 1059:18, 1069:11, 1076:6, 1099:2, 1194:16</p> <p>overseeing [1] - 1233:2</p> <p>overweight [1] - 1200:1</p> <p>OWEN [1] - 1115:24</p> <p>Owen [24] - 1044:5, 1044:10, 1056:1,</p>	<p>1115:3, 1116:10, 1183:6, 1185:12, 1185:20, 1187:6, 1189:9, 1193:14, 1210:22, 1212:1, 1213:22, 1214:23, 1217:8, 1219:16, 1223:4, 1226:23, 1236:17, 1237:8, 1240:11, 1243:3, 1250:3</p> <p>owen [2] - 1051:21, 1164:22</p> <p>Owen's [2] - 1043:19, 1250:1</p> <p>Owens [1] - 1054:9</p> <p>owens [2] - 1054:10</p> <p>own [10] - 1047:4, 1073:24, 1119:4, 1124:15, 1195:13, 1221:2, 1260:11, 1266:21, 1276:10, 1276:13</p> <p>owned [6] - 1266:19, 1267:1, 1267:4, 1267:21, 1269:3, 1269:16</p> <p>oxycodone [34] - 1039:23, 1127:18, 1127:19, 1128:2, 1128:6, 1150:5, 1153:13, 1154:1, 1157:5, 1157:25, 1158:9, 1158:18, 1159:11, 1159:12, 1159:25, 1162:25, 1163:9, 1181:4, 1248:17, 1250:6, 1261:3, 1261:12, 1261:18, 1261:23, 1261:25, 1262:9, 1262:11, 1270:22, 1271:2, 1271:9, 1274:16, 1290:15, 1290:16</p>
P		
		<p>p.m [3] - 1164:2, 1241:8, 1294:22</p> <p>package [2] - 1086:1, 1086:2</p> <p>Page [9] - 1032:16, 1032:25, 1035:20, 1044:11, 1067:5, 1076:13, 1108:16</p> <p>page [10] - 1035:16, 1040:2, 1067:7, 1080:16, 1141:20, 1145:10, 1222:22, 1223:3, 1223:4, 1229:21</p> <p>pages [9] - 1031:18, 1032:5, 1036:16, 1036:18, 1038:15, 1039:20, 1259:21, 1263:16</p> <p>paid [2] - 1099:22, 1120:11</p> <p>Pain [17] - 1118:10, 1119:8, 1121:10, 1121:12, 1122:20, 1122:22, 1122:25, 1191:17, 1219:21, 1220:2, 1221:18, 1221:22, 1221:25, 1224:18, 1234:10, 1234:22</p> <p>pain [279] - 1052:10, 1052:24, 1053:2, 1053:11, 1061:19, 1061:20, 1063:23, 1063:25, 1064:4, 1064:11, 1065:2, 1065:14, 1066:10, 1066:11, 1067:20, 1067:25, 1068:19, 1068:22, 1069:6, 1069:8, 1069:14, 1075:3, 1075:5, 1075:10, 1075:14, 1075:16, 1075:24, 1076:10, 1076:22, 1078:14, 1078:17, 1078:21, 1079:14, 1086:18, 1086:20, 1086:25, 1087:3, 1087:17, 1088:20, 1089:1, 1089:15, 1089:16, 1089:17, 1090:10, 1090:21, 1093:17, 1094:21, 1095:6, 1095:14, 1096:15, 1097:7, 1100:12, 1100:13, 1101:3, 1101:10, 1106:6, 1106:24, 1117:20, 1117:21, 1118:14, 1118:19, 1119:4, 1119:14, 1120:1, 1121:9, 1121:11, 1123:2, 1123:3, 1124:10, 1124:16, 1124:18, 1124:20, 1124:22, 1125:6, 1125:17,</p>

<p>1125:21, 1125:23, 1126:1, 1126:15, 1126:20, 1127:8, 1128:25, 1129:6, 1129:8, 1129:16, 1130:1, 1130:5, 1131:15, 1131:18, 1132:23, 1133:8, 1134:11, 1136:7, 1138:4, 1138:6, 1138:8, 1139:11, 1139:23, 1143:2, 1143:4, 1143:5, 1143:8, 1143:11, 1143:18, 1143:20, 1143:22, 1143:25, 1144:4, 1151:22, 1151:24, 1154:23, 1155:1, 1155:2, 1155:3, 1155:4, 1155:6, 1155:9, 1155:15, 1155:18, 1155:21, 1155:24, 1156:16, 1156:22, 1160:22, 1160:24, 1161:2, 1161:3, 1161:4, 1161:8, 1162:2, 1162:4, 1162:9, 1162:10, 1162:14, 1162:18, 1163:3, 1164:23, 1164:24, 1165:4, 1165:9, 1165:21, 1166:4, 1166:19, 1166:21, 1166:23, 1166:24, 1167:4, 1167:12, 1167:22, 1167:24, 1168:3, 1168:17, 1168:18, 1168:24, 1169:7, 1169:9, 1169:12, 1169:16, 1170:3, 1170:4, 1170:18, 1170:19, 1170:20, 1171:7, 1172:10, 1172:21, 1172:22, 1173:6, 1173:7, 1173:9, 1173:12, 1173:20, 1174:3, 1174:4, 1174:9, 1174:10, 1174:14, 1174:15, 1174:16, 1174:19, 1174:21, 1175:8, 1175:9, 1175:18, 1175:24, 1176:2, 1176:5, 1177:2, 1177:4, 1177:5, 1177:8, 1179:5, 1179:20, 1182:9, 1182:10, 1183:7, 1187:1, 1187:7, 1187:17, 1188:17, 1190:8, 1190:21, 1190:24, 1191:12, 1191:14, 1192:4, 1192:5, 1199:13, 1199:21, 1200:12, 1200:17, 1200:18, 1200:19, 1200:21, 1201:2, 1201:10, 1201:18, 1201:19, 1202:6, 1202:10, 1204:12, 1205:2, 1205:23, 1205:25, 1206:3, 1206:9, 1206:15, 1207:1, 1207:3, 1207:7, 1207:13, 1208:13, 1210:17, 1210:19, 1213:12, 1213:14, 1214:20, 1215:15, 1218:12, 1218:18, 1218:25, 1219:17, 1221:16, 1221:17, 1222:1, 1222:12, 1224:10, 1225:23, 1227:15, 1227:16, 1230:22, 1233:3, 1243:14, 1244:4, 1245:1, 1245:14, 1245:15, 1251:18, 1251:21, 1252:6, 1272:25, 1273:2, 1273:7, 1273:14, 1281:25, 1283:19</p> <p>painful [2] - 1074:21, 1134:7</p> <p>panel [5] - 1120:12, 1120:13, 1120:16, 1121:1, 1122:9</p> <p>panels [1] - 1220:15</p> <p>pants [1] - 1163:9</p> <p>paper [8] - 1038:19, 1111:8, 1209:7, 1209:8, 1231:11, 1231:13, 1234:18, 1290:18</p> <p>papers [6] - 1033:10, 1033:11, 1034:12, 1112:12, 1185:15, 1191:7</p> <p>paperwork [8] - 1034:2, 1034:19, 1060:23, 1100:23, 1196:12, 1196:16, 1209:6, 1222:11</p> <p>Paradigm [3] - 1119:14, 1119:23, 1119:24</p>	<p>Paragraph [1] - 1244:24</p> <p>paragraphs [1] - 1263:13</p> <p>paralegal [1] - 1164:3</p> <p>paralyzed [1] - 1090:12</p> <p>pardon [2] - 1118:1, 1276:23</p> <p>park [1] - 1270:1</p> <p>Parkway [1] - 1114:9</p> <p>part [60] - 1032:4, 1034:20, 1041:9, 1045:5, 1045:11, 1048:17, 1069:10, 1081:13, 1115:15, 1115:19, 1119:15, 1121:23, 1129:25, 1130:9, 1134:18, 1137:10, 1138:16, 1140:12, 1141:20, 1178:11, 1191:10, 1191:16, 1192:19, 1207:18, 1207:20, 1207:22, 1208:4, 1208:18, 1208:19, 1208:24, 1209:3, 1209:21, 1209:23, 1211:14, 1212:15, 1217:21, 1226:6, 1230:24, 1231:1, 1237:9, 1246:7, 1246:9, 1255:25, 1256:23, 1256:25, 1258:13, 1258:23, 1259:6, 1260:8, 1260:25, 1261:6, 1264:11, 1264:12, 1265:5, 1266:3, 1266:8, 1271:21, 1279:21, 1283:8</p> <p>partial [1] - 1076:24</p> <p>partially [2] - 1181:16, 1191:10</p> <p>participate [3] - 1217:10, 1217:13, 1217:15</p> <p>participated [1] - 1217:19</p> <p>participating [2] - 1067:21, 1173:2</p> <p>participation [1] - 1120:10</p> <p>particular [8] - 1035:7, 1042:2, 1053:24, 1087:6, 1101:23, 1206:12, 1286:8, 1286:18</p> <p>particularly [3] - 1150:5, 1253:5, 1261:3</p> <p>party [1] - 1238:21</p> <p>pass [2] - 1096:18, 1241:1</p> <p>past [10] - 1064:1, 1079:14, 1118:13, 1122:24, 1134:4, 1169:14, 1208:13, 1209:1, 1232:15, 1254:21</p> <p>pathological [1] - 1169:13</p> <p>pathology [8] - 1125:21, 1143:1, 1143:5, 1171:21, 1176:9, 1176:12, 1176:14, 1176:18</p> <p>patient [175] - 1036:1, 1036:4, 1036:10, 1037:8, 1037:20, 1038:15, 1040:3, 1040:23, 1042:1, 1042:5, 1089:20, 1095:7, 1109:5, 1131:21, 1132:19, 1132:23, 1134:24, 1136:12, 1139:2, 1140:6, 1143:7, 1143:17, 1143:24, 1144:11, 1146:8, 1146:13, 1146:14, 1146:19, 1147:2, 1147:7, 1147:15, 1147:18, 1147:25, 1148:6, 1148:20, 1149:10, 1149:22, 1151:2, 1151:9, 1151:18, 1152:20, 1152:22, 1153:4, 1153:6, 1153:8, 1153:13, 1153:15, 1154:14, 1154:25, 1156:11, 1156:15, 1157:13, 1159:20, 1159:21, 1161:22, 1162:15, 1163:7, 1163:8, 1165:7, 1165:15, 1165:21, 1166:13, 1171:8, 1171:9, 1171:12, 1174:15, 1176:6, 1176:13, 1177:15, 1180:6, 1180:13, 1181:3, 1182:19, 1186:11, 1186:13, 1192:21, 1196:7, 1196:8</p>	<p>1196:25, 1198:10, 1198:13, 1198:19, 1199:4, 1199:8, 1199:10, 1199:14, 1199:16, 1200:15, 1200:20, 1202:9, 1202:19, 1203:21, 1204:5, 1204:23, 1205:22, 1205:25, 1207:12, 1208:25, 1209:13, 1209:16, 1210:5, 1210:13, 1210:25, 1211:15, 1213:14, 1214:13, 1214:15, 1215:1, 1215:8, 1215:12, 1216:24, 1218:8, 1218:18, 1221:12, 1221:15, 1223:7, 1224:2, 1224:15, 1225:2, 1226:19, 1227:19, 1228:7, 1228:11, 1228:21, 1230:14, 1231:15, 1232:10, 1232:25, 1237:5, 1237:19, 1238:18, 1239:3, 1239:9, 1244:16, 1245:20, 1246:12, 1246:16, 1247:22, 1247:23, 1249:24, 1250:12, 1250:22, 1251:8, 1274:5, 1274:22, 1275:2, 1279:7, 1279:14, 1279:24, 1280:3, 1280:11, 1281:9, 1281:12, 1281:18, 1281:19, 1281:24, 1282:10, 1283:1, 1283:6, 1283:14, 1283:15, 1283:17, 1286:14, 1286:21, 1288:16, 1289:5, 1289:15, 1291:24, 1292:1, 1292:12</p> <p>patient's [7] - 1148:3, 1151:21, 1154:8, 1154:23, 1219:13, 1228:4, 1283:3</p> <p>patients [69] - 1033:21, 1034:3, 1035:13, 1037:1, 1037:13, 1045:11, 1053:13, 1085:20, 1086:6, 1088:15, 1089:22, 1091:11, 1095:8, 1140:18, 1140:19, 1149:8, 1151:1, 1157:8, 1161:9, 1161:10, 1165:16, 1166:15, 1167:15, 1174:8, 1177:13, 1180:9, 1182:20, 1183:2, 1184:11, 1189:6, 1197:23, 1201:7, 1204:11, 1206:25, 1208:16, 1208:19, 1210:8, 1212:23, 1222:7, 1224:5, 1226:14, 1234:4, 1237:22, 1238:25, 1239:14, 1247:23, 1247:24, 1271:8, 1271:14, 1273:20, 1273:21, 1273:22, 1273:23, 1274:1, 1274:7, 1274:9, 1274:16, 1276:4, 1278:3, 1278:4, 1279:3, 1284:14, 1287:7, 1287:22, 1288:9, 1291:13, 1291:17, 1293:17, 1294:5</p> <p>patients' [1] - 1036:5</p> <p>pattern [10] - 1182:6, 1228:16, 1229:17, 1229:24, 1232:12, 1246:13, 1246:14, 1246:16, 1246:19, 1247:2</p> <p>patterns [2] - 1230:8, 1234:2</p> <p>pay [4] - 1125:15, 1169:10, 1179:19, 1268:1</p> <p>paying [1] - 1097:13</p> <p>payment [4] - 1291:10, 1291:11, 1291:19, 1292:1</p> <p>Peekskill [2] - 1264:19, 1264:20</p> <p>peer [2] - 1121:9, 1121:11</p> <p>peg [11] - 1094:22, 1094:25, 1095:1, 1095:4, 1095:10, 1095:17, 1100:19, 1100:22, 1100:24, 1100:25, 1101:9</p> <p>penalty [1] - 1125:12</p> <p>people [35] - 1033:11, 1070:3, 1084:3, 1126:3, 1167:22, 1167:23, 1168:3, 1168:16, 1174:13, 1176:21, 1177:4,</p>
--	--	--

<p>1177:5, 1177:6, 1178:2, 1186:8, 1191:6, 1201:9, 1201:16, 1203:21, 1206:19, 1214:9, 1214:19, 1218:10, 1218:21, 1223:16, 1225:6, 1226:1, 1232:1, 1274:21, 1285:5, 1285:6, 1285:7, 1288:5, 1290:22, 1291:16</p> <p>people's [1] - 1198:25</p> <p>per [2] - 1219:7, 1291:4</p> <p>perceive [1] - 1171:24</p> <p>perceived [3] - 1175:18, 1176:10, 1176:16</p> <p>percent [3] - 1140:3, 1169:12, 1288:22</p> <p>perception [4] - 1134:11, 1171:6, 1172:14, 1175:24</p> <p>perform [7] - 1046:16, 1183:19, 1194:24, 1202:18, 1243:17, 1243:18, 1243:19</p> <p>performed [12] - 1052:15, 1131:23, 1131:24, 1145:17, 1145:18, 1146:4, 1146:5, 1147:19, 1147:21, 1203:17, 1204:2, 1211:18</p> <p>perhaps [11] - 1033:10, 1046:25, 1047:22, 1093:24, 1132:18, 1133:12, 1158:18, 1162:25, 1202:6, 1247:13</p> <p>period [27] - 1062:25, 1070:18, 1075:23, 1076:22, 1079:4, 1091:16, 1093:12, 1095:23, 1134:8, 1144:20, 1186:21, 1187:15, 1190:23, 1191:11, 1193:2, 1194:5, 1206:16, 1213:1, 1213:5, 1220:23, 1230:4, 1234:8, 1235:2, 1237:9, 1237:10, 1275:9</p> <p>periodic [2] - 1228:2, 1228:3</p> <p>periodically [1] - 1079:6</p> <p>periods [1] - 1151:23</p> <p>perithyroid [1] - 1162:5</p> <p>perjury [1] - 1257:16</p> <p>permit [6] - 1031:16, 1034:7, 1035:4, 1042:18, 1051:13, 1252:24</p> <p>permitted [5] - 1048:7, 1261:1, 1278:22, 1280:4, 1280:18</p> <p>persist [1] - 1258:2</p> <p>persists [1] - 1173:7</p> <p>person [35] - 1039:10, 1045:13, 1049:1, 1051:8, 1052:4, 1067:20, 1079:8, 1080:9, 1095:15, 1120:11, 1131:15, 1132:3, 1132:11, 1136:2, 1142:2, 1145:12, 1145:21, 1153:25, 1154:21, 1166:11, 1167:13, 1169:8, 1170:24, 1171:19, 1172:7, 1173:12, 1173:19, 1175:16, 1199:24, 1200:17, 1202:9, 1203:7, 1203:13, 1215:22</p> <p>person's [3] - 1172:3, 1172:21, 1173:16</p> <p>personal [1] - 1133:22</p> <p>personality [1] - 1134:2</p> <p>persons [5] - 1109:11, 1152:9, 1167:18, 1168:9, 1247:20</p> <p>perspective [2] - 1053:1, 1088:25</p> <p>pertaining [2] - 1244:6, 1260:12</p> <p>pertinent [4] - 1131:22, 1145:6, 1145:8, 1184:1</p> <p>Ph.D [2] - 1054:23, 1055:4</p> <p>pharmaceutical [5] - 1133:7, 1170:5</p>	<p>1170:11, 1170:12, 1170:16</p> <p>pharmacies [7] - 1266:19, 1266:23, 1267:19, 1267:20, 1267:21, 1268:1, 1269:17</p> <p>Pharmacies [2] - 1270:2, 1270:3</p> <p>pharmacist [15] - 1254:22, 1260:18, 1265:17, 1265:20, 1266:3, 1266:12, 1270:7, 1270:11, 1270:14, 1274:23, 1282:12, 1285:23, 1285:24, 1286:9, 1292:6</p> <p>pharmacists [1] - 1286:5</p> <p>Pharmacy [13] - 1086:3, 1258:18, 1267:1, 1267:2, 1268:12, 1269:1, 1269:7, 1269:20, 1269:22, 1270:1, 1270:8, 1278:13</p> <p>pharmacy [31] - 1145:10, 1208:23, 1224:15, 1237:6, 1264:5, 1265:13, 1265:14, 1265:21, 1266:13, 1266:20, 1266:21, 1267:22, 1267:23, 1268:4, 1268:13, 1268:25, 1270:10, 1272:14, 1279:4, 1279:8, 1279:11, 1279:15, 1279:24, 1282:11, 1283:6, 1284:3, 1285:18, 1285:23, 1286:10, 1290:6, 1290:8</p> <p>phase [1] - 1134:3</p> <p>philosophy [1] - 1054:23</p> <p>phone [9] - 1238:21, 1272:18, 1284:8, 1286:23, 1289:21, 1289:23, 1289:25, 1290:22, 1292:12</p> <p>phonetic [2] - 1123:20, 1123:21</p> <p>photocopies [1] - 1157:19</p> <p>photograph [2] - 1268:9, 1268:11</p> <p>photos [1] - 1107:7</p> <p>phrase [1] - 1203:4</p> <p>physical [57] - 1066:22, 1066:24, 1067:3, 1067:12, 1067:21, 1067:24, 1091:4, 1091:10, 1102:13, 1102:18, 1124:18, 1125:23, 1126:21, 1127:1, 1127:3, 1130:2, 1132:4, 1132:6, 1132:8, 1132:13, 1133:12, 1134:20, 1138:14, 1138:17, 1138:22, 1140:7, 1140:8, 1140:14, 1141:15, 1142:10, 1142:13, 1142:16, 1142:21, 1143:8, 1144:2, 1144:10, 1145:14, 1145:15, 1149:19, 1150:7, 1151:9, 1151:13, 1161:23, 1170:8, 1172:24, 1173:4, 1176:5, 1184:2, 1202:13, 1202:18, 1202:22, 1203:17, 1210:17, 1210:19, 1211:11, 1235:6, 1252:9</p> <p>physically [1] - 1179:10</p> <p>physician [34] - 1120:24, 1128:15, 1128:16, 1136:23, 1149:25, 1166:1, 1181:22, 1181:23, 1183:19, 1187:17, 1187:18, 1187:21, 1196:7, 1199:9, 1210:9, 1211:14, 1220:16, 1224:2, 1231:19, 1231:22, 1233:11, 1233:25, 1239:8, 1250:23, 1274:5, 1274:10, 1276:19, 1276:20, 1279:25, 1280:3, 1280:6, 1280:9, 1281:12, 1282:7</p> <p>physician's [1] - 1121:3</p> <p>physicians [13] - 1053:3, 1120:5, 1121:2, 1140:12, 1145:12, 1189:9, 1202:17, 1233:14, 1234:20, 1251:18.</p>	<p>1279:6, 1280:25, 1281:8</p> <p>PIC [1] - 1270:14</p> <p>pick [4] - 1048:12, 1057:2, 1114:22, 1292:19</p> <p>picking [1] - 1054:2</p> <p>picture [1] - 1268:24</p> <p>piece [6] - 1038:19, 1125:3, 1209:7, 1209:8, 1231:11, 1231:13</p> <p>Pilates [1] - 1170:9</p> <p>pile [2] - 1290:12, 1290:14</p> <p>pill [7] - 1032:3, 1032:7, 1032:10, 1122:2, 1135:20, 1184:16, 1288:20</p> <p>pills [7] - 1067:15, 1083:12, 1083:21, 1084:8, 1098:14, 1153:14, 1250:21</p> <p>pilots [3] - 1122:12, 1122:13, 1122:18</p> <p>pinches [1] - 1206:8</p> <p>pinching [1] - 1169:20</p> <p>Pittsburgh [2] - 1117:22, 1119:3</p> <p>place [9] - 1065:13, 1076:16, 1078:23, 1144:25, 1187:1, 1187:8, 1273:14, 1273:15, 1283:2</p> <p>placed [1] - 1135:9</p> <p>plan [18] - 1042:10, 1042:20, 1046:22, 1064:22, 1065:12, 1068:9, 1078:23, 1078:25, 1079:8, 1081:11, 1130:9, 1149:21, 1209:4, 1214:3, 1214:7, 1216:6, 1216:12, 1221:4</p> <p>planned [5] - 1039:16, 1115:15, 1216:16, 1281:16, 1282:5</p> <p>planning [2] - 1044:18</p> <p>plans [2] - 1050:5, 1218:11</p> <p>plant [2] - 1127:11, 1127:12</p> <p>played [1] - 1047:11</p> <p>playing [1] - 1085:7</p> <p>Plaza [1] - 1270:1</p> <p>plea [7] - 1255:18, 1255:24, 1256:10, 1256:18, 1257:25, 1258:2, 1260:13</p> <p>pleasurable [1] - 1173:2</p> <p>pled [4] - 1258:1, 1260:9, 1261:10, 1261:22</p> <p>plus [4] - 1125:12, 1143:18, 1170:17, 1171:22</p> <p>point [26] - 1034:5, 1034:6, 1039:4, 1042:22, 1044:11, 1055:2, 1055:9, 1083:8, 1104:24, 1107:22, 1113:7, 1119:17, 1140:6, 1161:21, 1173:5, 1182:12, 1199:7, 1217:11, 1217:14, 1220:21, 1265:8, 1266:20, 1270:16, 1275:17, 1282:3, 1292:14</p> <p>pointed [1] - 1038:23</p> <p>points [5] - 1039:16, 1044:10, 1095:12, 1151:20, 1243:7</p> <p>policy [5] - 1233:17, 1234:12, 1234:15, 1234:19, 1234:23</p> <p>polyps [2] - 1088:6, 1088:7</p> <p>poor [1] - 1169:2</p> <p>poppy [2] - 1127:11, 1127:12</p> <p>popular [4] - 1130:8, 1159:3, 1159:5, 1160:10</p> <p>population [6] - 1174:21, 1177:2, 1177:3, 1216:24, 1217:25, 1218:8</p> <p>portion [2] - 1032:12, 1084:21</p>
--	---	---

<p>portions [1] - 1038:12</p> <p>position [6] - 1046:25, 1122:22, 1163:18, 1182:11, 1224:5, 1234:11</p> <p>positions [1] - 1191:7</p> <p>positive [4] - 1068:10, 1146:5, 1234:1, 1288:22</p> <p>positives [1] - 1139:25</p> <p>possession [4] - 1057:17, 1058:11, 1110:3, 1198:7</p> <p>possibilities [1] - 1171:23</p> <p>possible [12] - 1156:2, 1156:23, 1192:12, 1197:2, 1200:5, 1200:6, 1204:14, 1210:7, 1220:4, 1226:5, 1231:8, 1231:16</p> <p>possibly [5] - 1121:7, 1171:18, 1203:16, 1203:25, 1289:8</p> <p>post [4] - 1134:3, 1166:6, 1186:15, 1187:1</p> <p>post-traumatic [1] - 1166:6</p> <p>postal [3] - 1081:18, 1082:12, 1082:24</p> <p>potential [5] - 1067:24, 1222:8, 1223:20, 1250:7, 1253:3</p> <p>potentially [1] - 1253:2</p> <p>pounds [2] - 1074:8, 1074:12</p> <p>powerful [1] - 1239:22</p> <p>practical [1] - 1118:17</p> <p>practice [38] - 1039:25, 1040:20, 1047:4, 1051:18, 1052:11, 1053:25, 1055:6, 1118:4, 1118:23, 1137:22, 1149:24, 1149:25, 1150:22, 1154:17, 1160:6, 1180:17, 1180:18, 1183:3, 1183:25, 1185:9, 1188:20, 1189:3, 1192:11, 1196:8, 1197:1, 1206:12, 1218:25, 1220:18, 1220:22, 1222:1, 1247:18, 1251:18, 1252:6, 1252:11, 1261:13, 1262:5, 1273:1</p> <p>practices [8] - 1123:2, 1197:3, 1197:6, 1197:7, 1197:9, 1198:19, 1240:12</p> <p>practicing [19] - 1032:1, 1053:9, 1119:16, 1140:12, 1157:3, 1183:20, 1184:6, 1184:7, 1189:11, 1189:13, 1202:20, 1245:14, 1270:7, 1273:2, 1273:5, 1273:7, 1273:14, 1273:15, 1273:17</p> <p>practitioner [3] - 1070:15, 1070:16, 1198:23</p> <p>practitioners [2] - 1191:13</p> <p>precedes [1] - 1196:12</p> <p>precise [1] - 1141:8</p> <p>precursor [1] - 1127:25</p> <p>predict [3] - 1167:24, 1176:10, 1176:15</p> <p>predictive [1] - 1126:12</p> <p>prefer [1] - 1260:13</p> <p>pregnancy [1] - 1139:22</p> <p>preliminary [2] - 1088:11, 1139:17</p> <p>preparation [1] - 1085:4</p> <p>prepared [2] - 1055:3, 1142:4</p> <p>preparing [1] - 1081:11</p> <p>prescribe [12] - 1094:5, 1097:19, 1140:9, 1140:16, 1147:12, 1162:24, 1183:15, 1184:24, 1226:4, 1239:24, 1246:23, 1248:16</p>	<p>prescribed [40] - 1062:8, 1065:10, 1068:9, 1068:12, 1068:24, 1069:4, 1069:22, 1069:24, 1069:25, 1078:16, 1081:1, 1081:2, 1081:7, 1083:21, 1087:16, 1088:2, 1094:2, 1094:3, 1094:8, 1134:24, 1136:15, 1136:17, 1146:2, 1146:20, 1152:3, 1157:15, 1158:4, 1159:23, 1180:25, 1183:16, 1185:8, 1188:16, 1205:12, 1216:7, 1231:14, 1236:4, 1236:9, 1247:16, 1250:15</p> <p>prescribes [1] - 1248:10</p> <p>prescribing [27] - 1054:2, 1066:10, 1098:3, 1137:6, 1145:24, 1149:23, 1150:1, 1150:4, 1150:10, 1150:19, 1150:21, 1152:24, 1156:8, 1159:8, 1160:7, 1160:19, 1176:19, 1178:23, 1184:4, 1212:3, 1213:7, 1246:13, 1246:19, 1247:2, 1249:22, 1283:23</p> <p>prescription [52] - 1064:18, 1068:23, 1072:12, 1081:12, 1092:25, 1093:24, 1097:22, 1153:3, 1153:7, 1153:10, 1153:15, 1154:1, 1154:13, 1154:16, 1157:14, 1157:16, 1157:18, 1158:24, 1165:22, 1173:25, 1176:18, 1187:3, 1188:21, 1212:22, 1236:16, 1236:19, 1236:24, 1237:2, 1246:16, 1248:6, 1249:23, 1249:24, 1249:25, 1279:9, 1279:23, 1280:5, 1280:9, 1280:11, 1280:12, 1280:15, 1281:19, 1282:9, 1282:11, 1282:25, 1283:5, 1283:12, 1290:9, 1290:10, 1290:14, 1290:16, 1290:17, 1291:18</p> <p>prescriptions [79] - 1062:24, 1094:15, 1107:19, 1150:18, 1153:16, 1155:13, 1156:18, 1157:4, 1157:9, 1157:13, 1157:20, 1157:23, 1157:24, 1158:16, 1158:25, 1180:14, 1180:16, 1184:9, 1185:3, 1188:25, 1231:4, 1245:20, 1261:7, 1261:11, 1261:16, 1261:18, 1261:23, 1262:4, 1270:17, 1270:21, 1271:9, 1271:14, 1272:13, 1272:21, 1275:11, 1275:20, 1279:4, 1279:6, 1279:9, 1279:13, 1279:19, 1280:1, 1280:19, 1280:21, 1281:2, 1281:8, 1281:11, 1281:13, 1281:19, 1281:22, 1282:5, 1282:13, 1282:15, 1283:2, 1284:3, 1284:4, 1284:6, 1285:5, 1285:7, 1285:24, 1285:25, 1286:11, 1286:13, 1286:17, 1286:21, 1287:5, 1287:10, 1287:15, 1287:16, 1287:20, 1287:25, 1288:7, 1288:8, 1289:18, 1290:5, 1291:14, 1291:15</p> <p>presence [11] - 1031:1, 1073:15, 1114:19, 1163:23, 1178:17, 1212:5, 1241:5, 1242:1, 1242:21, 1263:23, 1292:22</p> <p>present [2] - 1055:11, 1138:13</p> <p>presented [3] - 1034:12, 1034:19, 1055:10</p> <p>presenting [3] - 1033:22, 1041:11, 1041:21</p> <p>presents [1] - 1161:1</p>	<p>president [1] - 1122:24</p> <p>pressed [1] - 1090:3</p> <p>pressure [26] - 1070:7, 1070:8, 1070:14, 1070:17, 1070:24, 1071:1, 1088:9, 1088:10, 1095:12, 1135:19, 1135:20, 1135:22, 1198:25, 1199:4, 1199:8, 1252:2, 1252:3, 1288:17, 1288:18, 1288:20, 1289:2, 1289:5, 1289:15</p> <p>pretty [10] - 1043:1, 1125:4, 1125:13, 1129:1, 1155:5, 1178:15, 1199:22, 1269:9, 1291:20, 1291:23</p> <p>preventative [1] - 1077:13</p> <p>previous [9] - 1131:22, 1133:10, 1135:7, 1138:2, 1138:22, 1145:6, 1145:8, 1145:11, 1156:18</p> <p>previously [16] - 1060:9, 1062:12, 1065:7, 1065:16, 1065:21, 1068:21, 1069:3, 1072:19, 1075:18, 1081:23, 1123:5, 1134:23, 1137:4, 1145:12, 1242:8</p> <p>primarily [2] - 1246:21, 1269:17</p> <p>primary [6] - 1117:19, 1170:11, 1187:2, 1191:13, 1199:9, 1210:8</p> <p>prison [1] - 1071:24</p> <p>private [1] - 1122:15</p> <p>probability [1] - 1182:15</p> <p>problem [27] - 1035:11, 1043:2, 1110:22, 1126:25, 1137:9, 1139:23, 1153:11, 1161:8, 1162:5, 1162:14, 1168:10, 1168:14, 1168:19, 1175:12, 1177:10, 1202:2, 1204:8, 1218:18, 1226:6, 1243:18, 1243:20, 1244:1, 1244:3, 1244:4, 1292:10</p> <p>problems [11] - 1050:4, 1064:11, 1109:16, 1120:8, 1133:1, 1138:9, 1162:6, 1169:5, 1244:6, 1281:24, 1289:16</p> <p>procedure [1] - 1291:20</p> <p>procedures [2] - 1170:6, 1218:12</p> <p>proceed [13] - 1057:3, 1073:14, 1073:16, 1073:17, 1084:19, 1115:22, 1164:18, 1178:19, 1185:16, 1242:23, 1259:18, 1263:22, 1263:24</p> <p>proceedings [1] - 1295:4</p> <p>proceeds [1] - 1258:14</p> <p>process [2] - 1138:19, 1149:5</p> <p>processes [1] - 1175:15</p> <p>produce [5] - 1156:9, 1156:12, 1161:8, 1182:16, 1200:12</p> <p>productive [1] - 1175:11</p> <p>products [2] - 1261:19, 1261:23</p> <p>profanity [1] - 1099:11</p> <p>profession [2] - 1055:8, 1116:16</p> <p>professional [11] - 1043:14, 1044:5, 1150:22, 1154:17, 1160:6, 1180:17, 1183:24, 1247:17, 1249:22, 1261:13, 1277:5</p> <p>profile [1] - 1184:16</p> <p>profit [2] - 1120:9, 1120:10</p> <p>program [15] - 1052:24, 1117:5, 1117:14, 1117:24, 1119:3, 1120:4, 1182:14, 1187:3, 1217:11, 1217:14,</p>
---	--	--

<p>1236:20, 1236:25, 1237:2 pronounce [1] - 1070:20 pronouncing [1] - 1167:1 proper [21] - 1038:2, 1130:3, 1132:18, 1140:8, 1144:14, 1145:2, 1147:6, 1150:14, 1150:16, 1150:17, 1152:19, 1153:2, 1153:3, 1153:6, 1153:17, 1169:24, 1211:20, 1244:14, 1244:21, 1246:20, 1251:1 properly [3] - 1149:7, 1157:3, 1282:16 property [1] - 1125:14 prosecuted [2] - 1083:23, 1257:16 prosecutor [2] - 1196:4, 1197:16 prostitution [5] - 1059:12, 1059:16, 1059:21, 1060:1, 1060:4 prove [7] - 1040:24, 1040:25, 1041:21, 1041:22, 1143:3, 1188:7, 1188:9 proved [1] - 1045:1 proven [2] - 1190:19, 1220:8 provide [12] - 1043:9, 1063:22, 1074:1, 1076:22, 1086:20, 1131:8, 1182:15, 1208:16, 1222:7, 1251:5, 1257:13, 1257:19 provided [14] - 1037:12, 1061:5, 1061:10, 1062:3, 1064:3, 1065:14, 1066:3, 1081:4, 1088:24, 1093:7, 1185:4, 1185:5, 1222:5 provides [1] - 1225:5 providing [3] - 1060:24, 1081:14, 1251:3 provisions [1] - 1224:13 prudent [2] - 1128:14, 1128:16 psychiatrist [3] - 1132:22, 1132:25, 1133:5 psychological [13] - 1148:17, 1162:10, 1162:11, 1166:15, 1170:22, 1170:24, 1171:3, 1171:10, 1177:4, 1177:5, 1177:7, 1210:18, 1210:21 psychologically [1] - 1179:10 psychologist [19] - 1052:10, 1052:16, 1052:17, 1052:21, 1052:23, 1053:1, 1053:8, 1053:11, 1054:4, 1054:24, 1132:19, 1132:21, 1132:23, 1132:25, 1133:1, 1133:9, 1171:13, 1175:14, 1219:25 psychologist's [1] - 1053:16 psychologists [1] - 1053:3 psychosocial [6] - 1172:20, 1172:25, 1173:4, 1174:17, 1174:18, 1210:19 psychotherapy [5] - 1121:21, 1121:23, 1129:17, 1166:11, 1170:10 Public [1] - 1237:11 public [2] - 1183:12, 1212:22 publications [1] - 1123:1 published [2] - 1234:13, 1234:15 publishing [1] - 1191:7 pull [3] - 1124:25, 1129:1, 1254:14 pumps [1] - 1218:14 punch [1] - 1158:12 punishment [1] - 1259:22 purchased [2] - 1267:8, 1267:9 purpose [18] - 1046:4, 1053:15,</p>	<p>1075:16, 1132:24, 1150:23, 1154:18, 1180:22, 1181:20, 1183:25, 1184:9, 1185:5, 1185:9, 1222:6, 1223:10, 1247:18, 1261:14, 1262:5 purposes [3] - 1082:23, 1132:22, 1274:25 pursuant [2] - 1256:9, 1259:20 pursue [1] - 1148:16 push [1] - 1095:10 pushing [2] - 1090:10, 1090:11 put [20] - 1050:24, 1064:17, 1065:13, 1083:15, 1083:17, 1086:21, 1124:24, 1144:6, 1148:1, 1157:12, 1195:14, 1218:22, 1221:19, 1234:11, 1234:23, 1242:14, 1279:10, 1280:10, 1281:22, 1290:12 puts [1] - 1202:9 putting [3] - 1052:6, 1091:5, 1234:19</p> <p style="text-align: center;">Q</p> <p>qualified [3] - 1034:9, 1142:3, 1142:7 qualify [1] - 1259:9 quality [7] - 1124:23, 1143:8, 1173:17, 1215:5, 1215:11, 1223:11 quantities [1] - 1261:18 quantity [1] - 1236:9 questioned [1] - 1178:10 questioning [3] - 1034:15, 1091:24, 1177:18 questionnaire [1] - 1126:11 questionnaires [1] - 1171:4 questions [48] - 1033:6, 1035:1, 1036:21, 1038:5, 1038:18, 1039:1, 1048:9, 1049:14, 1057:9, 1073:5, 1079:16, 1080:20, 1082:16, 1088:12, 1097:2, 1099:4, 1102:16, 1112:16, 1131:13, 1138:5, 1138:12, 1138:14, 1138:18, 1154:20, 1164:24, 1165:25, 1178:24, 1185:11, 1194:14, 1235:1, 1243:11, 1245:11, 1248:2, 1252:13, 1255:1, 1260:12, 1263:19, 1273:1, 1273:24, 1274:12, 1277:6, 1277:7, 1278:23, 1282:1, 1282:4, 1282:6, 1283:19, 1286:25 quick [1] - 1043:2 quickly [3] - 1113:5, 1243:11, 1243:15 quit [2] - 1096:1, 1132:5 quite [9] - 1058:3, 1074:17, 1097:13, 1102:24, 1168:20, 1195:7, 1218:24, 1224:14, 1229:17</p> <p style="text-align: center;">R</p> <p>radar [1] - 1144:6 radiate [1] - 1138:6 radiating [1] - 1138:8 radiculopathy [3] - 1167:1, 1167:2, 1169:22 raise [2] - 1065:3, 1253:24 raised [4] - 1075:8, 1076:18, 1251:10,</p>	<p>1251:12 raises [1] - 1251:11 ran [1] - 1243:10 Randall's [2] - 1269:7, 1269:8 range [22] - 1140:24, 1141:1, 1141:2, 1141:4, 1141:5, 1141:7, 1141:16, 1141:19, 1141:21, 1141:23, 1141:25, 1142:4, 1142:8, 1142:14, 1142:17, 1142:21, 1145:15, 1151:16, 1165:6, 1201:23, 1201:25, 1259:2 rate [9] - 1063:23, 1065:1, 1065:4, 1068:19, 1069:6, 1069:8, 1069:14, 1086:20, 1105:8 rated [3] - 1164:23, 1164:24, 1165:4 rather [1] - 1243:10 rating [1] - 1201:1 rational [1] - 1225:15 rationale [1] - 1225:18 ray [3] - 1101:25, 1145:10, 1276:11 rays [2] - 1226:25, 1274:2 reach [1] - 1035:15 reaches [1] - 1036:8 reaching [1] - 1134:14 react [3] - 1128:1, 1129:23, 1133:3 reacting [1] - 1283:18 reaction [2] - 1124:22, 1130:5 read [15] - 1034:11, 1035:8, 1035:24, 1037:12, 1039:22, 1078:7, 1080:21, 1112:12, 1181:25, 1185:25, 1226:19, 1260:14, 1263:4, 1292:8 reading [1] - 1262:18 ready [6] - 1031:14, 1057:2, 1164:18, 1164:19, 1241:15, 1242:24 real [7] - 1113:5, 1131:5, 1141:18, 1143:22, 1209:2, 1212:3, 1219:16 realistic [2] - 1175:3, 1182:15 reality [1] - 1083:25 realize [6] - 1050:19, 1201:6, 1210:16, 1216:24, 1217:4, 1218:10 really [21] - 1035:12, 1035:13, 1035:14, 1037:9, 1046:14, 1047:2, 1047:23, 1073:9, 1126:2, 1162:14, 1166:7, 1169:10, 1182:15, 1190:24, 1200:14, 1200:17, 1209:11, 1219:1, 1232:6, 1238:10, 1293:8 reason [11] - 1067:16, 1067:17, 1072:14, 1073:25, 1076:25, 1077:2, 1095:4, 1097:8, 1238:13, 1286:8, 1286:18 reasonable [8] - 1128:14, 1128:16, 1146:23, 1228:4, 1230:8, 1230:9, 1285:13, 1286:24 reasons [5] - 1047:22, 1097:10, 1097:25, 1161:3, 1161:5 rebut [2] - 1046:5, 1051:21 rebuttal [2] - 1051:8, 1252:20 recalling [1] - 1213:3 receive [7] - 1246:16, 1259:23, 1270:23, 1279:18, 1282:9, 1284:5, 1287:21 received [7] - 1060:2, 1061:7, 1208:21, 1237:6, 1287:5, 1290:5, 1292:12</p>
---	--	---

<p>receives [2] - 1196:18, 1227:18</p> <p>receiving [8] - 1058:16, 1093:1, 1156:24, 1205:15, 1272:13, 1284:24, 1287:17, 1288:5</p> <p>recent [2] - 1085:25, 1236:24</p> <p>recently [8] - 1057:12, 1077:16, 1077:17, 1077:19, 1078:9, 1085:2, 1091:17, 1238:6</p> <p>receptors [2] - 1127:8, 1127:9</p> <p>Recessed [5] - 1056:19, 1114:23, 1164:2, 1241:8, 1294:22</p> <p>recognize [4] - 1083:3, 1130:8, 1175:15, 1223:5</p> <p>recognized [5] - 1130:10, 1212:5, 1212:13, 1213:10, 1213:15</p> <p>recognizing [1] - 1178:8</p> <p>recollect [1] - 1058:21</p> <p>recollection [20] - 1058:12, 1058:22, 1058:24, 1059:11, 1059:20, 1060:11, 1061:16, 1063:13, 1063:19, 1064:8, 1079:11, 1079:21, 1079:25, 1080:6, 1089:17, 1091:12, 1092:6, 1092:9, 1092:11, 1094:23</p> <p>recommend [2] - 1163:14, 1259:1</p> <p>recommended [2] - 1169:1, 1249:10</p> <p>recommends [1] - 1224:19</p> <p>record [14] - 1036:24, 1037:8, 1077:4, 1115:16, 1135:15, 1139:7, 1157:15, 1157:16, 1181:20, 1208:23, 1236:14, 1242:5, 1242:18, 1295:4</p> <p>recorded [1] - 1207:17</p> <p>records [42] - 1034:20, 1037:10, 1037:11, 1077:3, 1079:2, 1131:22, 1132:2, 1133:11, 1134:18, 1135:7, 1138:1, 1138:21, 1138:23, 1138:25, 1140:13, 1140:25, 1143:5, 1144:14, 1144:21, 1145:6, 1145:8, 1145:11, 1161:20, 1161:22, 1181:22, 1181:24, 1184:1, 1197:7, 1197:12, 1206:24, 1208:2, 1222:3, 1222:5, 1226:7, 1226:18, 1230:20, 1235:3, 1235:14, 1237:19, 1244:14, 1274:8, 1274:9</p> <p>recover [1] - 1048:7</p> <p>recovering [1] - 1063:10</p> <p>red [2] - 1040:18, 1040:19</p> <p>REDIRECT [2] - 1096:22, 1243:1</p> <p>redirect [3] - 1056:12, 1096:19, 1241:3</p> <p>reduce [4] - 1040:22, 1066:9, 1095:6, 1101:3</p> <p>reduced [11] - 1065:20, 1066:3, 1069:4, 1069:15, 1094:14, 1098:9, 1098:13, 1098:23, 1153:12, 1153:13, 1155:1</p> <p>reducing [1] - 1215:15</p> <p>reduction [4] - 1095:14, 1098:13, 1155:5, 1259:10</p> <p>reductions [1] - 1259:3</p> <p>refer [8] - 1046:11, 1101:17, 1101:25, 1102:2, 1132:19, 1132:23, 1152:25, 1170:24</p> <p>reference [4] - 1046:9, 1128:12, 1190:20, 1249:13</p> <p>referral [2] - 1273:21, 1273:22</p>	<p>referred [6] - 1147:20, 1166:15, 1171:12, 1240:18, 1248:21, 1249:14</p> <p>referring [6] - 1223:3, 1234:24, 1276:19, 1276:20, 1279:2, 1279:3</p> <p>refers [1] - 1203:6</p> <p>refill [1] - 1135:13</p> <p>refilling [1] - 1155:12</p> <p>refills [1] - 1136:20</p> <p>reflect [2] - 1077:3, 1235:14</p> <p>reflected [5] - 1087:15, 1146:15, 1169:7, 1207:14, 1208:15</p> <p>reflecting [1] - 1089:8</p> <p>reflection [2] - 1143:22, 1143:23</p> <p>reflects [2] - 1077:4, 1085:22</p> <p>refresh [1] - 1049:7</p> <p>refreshing [1] - 1049:6</p> <p>refute [2] - 1046:6, 1046:25</p> <p>regard [42] - 1049:14, 1139:4, 1139:13, 1140:17, 1140:24, 1141:3, 1141:25, 1142:20, 1142:24, 1143:1, 1144:24, 1151:7, 1152:9, 1162:2, 1162:23, 1171:17, 1174:16, 1174:19, 1176:6, 1180:11, 1180:13, 1181:12, 1181:14, 1182:3, 1182:5, 1183:7, 1184:10, 1220:12, 1222:6, 1233:16, 1233:24, 1244:10, 1247:15, 1249:18, 1252:4, 1267:1, 1276:2, 1281:15, 1283:22, 1284:17, 1286:17, 1292:6</p> <p>regarding [17] - 1034:7, 1035:13, 1038:6, 1038:18, 1041:25, 1049:3, 1049:24, 1051:14, 1060:8, 1063:22, 1073:21, 1118:13, 1139:14, 1193:5, 1219:18, 1258:10, 1280:21</p> <p>regardless [2] - 1065:12, 1251:4</p> <p>registered [7] - 1102:24, 1103:4, 1254:22, 1260:21, 1265:16, 1265:19, 1270:7</p> <p>registration [7] - 1189:16, 1189:23, 1249:2, 1260:22, 1261:1</p> <p>regular [1] - 1078:21</p> <p>regularly [1] - 1095:18</p> <p>regulate [3] - 1130:18, 1131:6, 1137:4</p> <p>regulating [1] - 1289:5</p> <p>regulation [1] - 1278:8</p> <p>regulations [5] - 1251:19, 1251:23, 1258:10, 1278:8, 1292:8</p> <p>Regulations [1] - 1278:14</p> <p>regulatory [1] - 1046:12</p> <p>rehabilitation [2] - 1170:15, 1249:15</p> <p>Rehabilitation [1] - 1119:8</p> <p>rehabilitative [2] - 1170:5, 1170:7</p> <p>reimbursement [1] - 1217:22</p> <p>reissue [1] - 1153:9</p> <p>rejected [1] - 1186:13</p> <p>relate [3] - 1076:8, 1078:3, 1078:13</p> <p>related [11] - 1060:24, 1065:1, 1065:4, 1065:16, 1066:11, 1069:14, 1077:18, 1167:22, 1174:14, 1175:20, 1230:22</p> <p>relates [6] - 1049:20, 1051:11, 1051:23, 1052:11, 1075:3, 1137:23</p> <p>relating [2] - 1068:14, 1187:16</p> <p>relationship [3] - 1196:7, 1196:9, 1211:14</p>	<p>relationships [1] - 1211:1</p> <p>relative [1] - 1183:8</p> <p>release [2] - 1096:4, 1101:3</p> <p>released [2] - 1112:21, 1112:24</p> <p>releasing [2] - 1090:14, 1249:23</p> <p>relevance [2] - 1111:3, 1177:18</p> <p>relevant [8] - 1034:22, 1037:21, 1038:16, 1038:17, 1046:20, 1047:4, 1049:12, 1061:5</p> <p>reliability [1] - 1172:3</p> <p>reliable [5] - 1141:12, 1143:19, 1145:22, 1168:24, 1184:22</p> <p>reliably [1] - 1246:22</p> <p>relieving [2] - 1281:25, 1283:19</p> <p>relooking [1] - 1129:21</p> <p>rely [5] - 1033:14, 1080:10, 1081:14, 1144:3, 1214:11</p> <p>remain [2] - 1253:1, 1253:11</p> <p>remained [1] - 1155:10</p> <p>remains [1] - 1165:12</p> <p>remember [84] - 1039:17, 1039:20, 1048:8, 1049:6, 1049:9, 1063:21, 1066:2, 1066:16, 1069:23, 1070:22, 1090:13, 1091:1, 1094:25, 1120:17, 1124:4, 1164:24, 1165:18, 1179:13, 1180:9, 1186:7, 1186:14, 1186:17, 1191:14, 1205:2, 1205:3, 1205:10, 1207:1, 1207:4, 1207:6, 1208:11, 1209:7, 1209:9, 1209:11, 1210:22, 1215:8, 1216:5, 1219:14, 1224:11, 1224:13, 1226:9, 1229:2, 1229:15, 1229:20, 1229:21, 1229:23, 1230:5, 1230:6, 1230:22, 1231:7, 1231:9, 1231:10, 1231:13, 1231:16, 1231:20, 1236:20, 1238:1, 1238:2, 1239:18, 1239:20, 1239:24, 1240:1, 1247:7, 1248:8, 1258:11, 1259:3, 1260:19, 1261:3, 1261:14, 1261:25, 1262:6, 1263:11, 1264:6, 1266:17, 1269:14, 1285:12, 1288:8, 1288:21, 1289:13, 1289:19, 1289:23, 1289:24, 1291:9, 1292:20</p> <p>remission [4] - 1060:15, 1075:19, 1077:6, 1077:8</p> <p>remodeling [5] - 1066:18, 1066:25, 1067:8, 1067:10, 1067:22</p> <p>remodelling [2] - 1066:20, 1067:11</p> <p>remolding [1] - 1066:19</p> <p>remote [1] - 1059:15</p> <p>renew [1] - 1265:23</p> <p>renewed [1] - 1265:21</p> <p>repeated [1] - 1219:2</p> <p>repeatedly [1] - 1099:5</p> <p>repetitively [1] - 1166:4</p> <p>rephrase [2] - 1146:11, 1281:7</p> <p>replaced [1] - 1159:13</p> <p>report [11] - 1031:15, 1031:21, 1032:13, 1032:17, 1033:10, 1043:19, 1043:25, 1127:2, 1143:24, 1144:4, 1171:2</p> <p>reported [14] - 1064:9, 1064:24, 1066:11, 1068:20, 1143:17, 1144:11,</p>
---	--	---

<p>1152:13, 1162:16, 1162:17, 1163:7, 1176:13, 1182:9, 1216:7, 1239:21</p> <p>REPORTER'S [1] - 1295:1</p> <p>reporting [6] - 1068:10, 1080:9, 1094:21, 1125:21, 1126:11, 1136:19</p> <p>reports [4] - 1143:5, 1170:20, 1235:17, 1237:15</p> <p>represent [3] - 1148:14, 1183:11, 1230:9</p> <p>represented [3] - 1032:25, 1226:20</p> <p>represents [1] - 1200:21</p> <p>request [4] - 1135:13, 1179:14, 1257:21, 1258:8</p> <p>requested [2] - 1031:23, 1075:11</p> <p>requesting [3] - 1075:10, 1075:15, 1076:10</p> <p>requests [2] - 1220:16, 1284:18</p> <p>require [7] - 1193:6, 1193:10, 1193:13, 1193:21, 1202:22, 1220:10</p> <p>required [12] - 1152:7, 1187:22, 1194:7, 1194:8, 1234:7, 1234:9, 1243:22, 1245:13, 1246:10, 1246:11, 1266:12, 1266:15</p> <p>requirements [2] - 1245:7, 1245:9</p> <p>requires [10] - 1067:23, 1141:10, 1192:4, 1207:19, 1209:22, 1210:16, 1214:13, 1216:6, 1226:12, 1230:25</p> <p>reserve [1] - 1055:9</p> <p>reside [1] - 1116:14</p> <p>residency [5] - 1117:11, 1117:12, 1117:14, 1117:16, 1119:3</p> <p>resort [2] - 1173:24, 1174:2</p> <p>resource [1] - 1133:9</p> <p>respect [3] - 1115:21, 1138:3, 1138:23</p> <p>respectfully [1] - 1039:14</p> <p>respiratory [1] - 1223:12</p> <p>respond [2] - 1233:12, 1233:14</p> <p>responded [1] - 1089:6</p> <p>responding [2] - 1099:4, 1219:1</p> <p>responds [1] - 1155:24</p> <p>response [3] - 1057:9, 1136:6, 1172:4</p> <p>responsibilities [2] - 1183:19, 1214:15</p> <p>responsibility [2] - 1160:10, 1282:14</p> <p>responsive [1] - 1076:3</p> <p>rest [3] - 1130:25, 1169:25, 1198:3</p> <p>restate [2] - 1048:9, 1105:2</p> <p>restore [2] - 1172:14, 1173:16</p> <p>restructuring [1] - 1129:22</p> <p>result [15] - 1062:7, 1064:16, 1064:18, 1065:19, 1066:2, 1066:21, 1069:13, 1069:22, 1075:14, 1076:19, 1078:18, 1078:22, 1099:25, 1161:16, 1264:5</p> <p>results [2] - 1140:3, 1235:15</p> <p>return [2] - 1088:12, 1112:22</p> <p>reversibly [1] - 1169:23</p> <p>review [25] - 1086:22, 1093:6, 1120:13, 1131:9, 1134:18, 1138:24, 1140:13, 1140:17, 1142:20, 1159:19, 1161:9, 1166:13, 1168:6, 1171:8, 1180:4, 1181:22, 1184:10, 1184:14, 1188:15, 1223:5, 1228:2, 1228:3, 1239:11, 1247:22, 1251:5</p>	<p>reviewed [28] - 1036:10, 1037:11, 1037:19, 1138:25, 1139:14, 1140:22, 1141:14, 1144:21, 1150:13, 1151:1, 1157:7, 1159:21, 1161:21, 1165:15, 1179:19, 1180:24, 1181:7, 1182:19, 1183:18, 1185:22, 1207:12, 1216:3, 1226:15, 1228:15, 1236:17, 1249:4, 1250:12</p> <p>reviewer [2] - 1121:9, 1121:11</p> <p>reviewing [5] - 1148:20, 1149:10, 1167:14, 1176:11, 1248:20</p> <p>revisit [2] - 1047:11, 1230:17</p> <p>Rexall [1] - 1269:20</p> <p>rheumatological [1] - 1162:6</p> <p>rheumatologist [1] - 1210:13</p> <p>Rheumatology [1] - 1163:14</p> <p>rheumatology [1] - 1162:20</p> <p>Rhoda [25] - 1060:24, 1091:13, 1092:3, 1092:18, 1102:22, 1106:1, 1107:25, 1271:19, 1272:2, 1272:9, 1277:18, 1277:19, 1277:21, 1277:22, 1277:24, 1278:1, 1278:23, 1279:12, 1281:15, 1282:20, 1282:22, 1284:2, 1284:12, 1285:1, 1285:11</p> <p>Rhoda's [1] - 1277:19</p> <p>rich [1] - 1173:18</p> <p>Richard [4] - 1131:10, 1255:2, 1261:7, 1270:17</p> <p>RICHARDSON [1] - 1057:5</p> <p>Richardson [16] - 1057:8, 1059:25, 1067:6, 1069:13, 1078:10, 1082:24, 1083:2, 1096:24, 1148:21, 1148:24, 1155:8, 1156:15, 1156:22, 1162:15, 1250:14, 1251:8</p> <p>rid [1] - 1201:18</p> <p>right-hand [2] - 1230:17, 1280:13</p> <p>risk [39] - 1051:12, 1052:11, 1052:12, 1053:12, 1054:1, 1054:14, 1062:14, 1126:12, 1126:14, 1126:15, 1126:16, 1126:17, 1129:2, 1129:3, 1129:10, 1129:13, 1129:14, 1129:17, 1133:16, 1133:18, 1133:20, 1133:21, 1145:17, 1148:4, 1148:5, 1148:15, 1166:3, 1166:8, 1172:12, 1173:23, 1176:20, 1176:21, 1177:8, 1178:25, 1181:9, 1217:25, 1235:23, 1250:7</p> <p>risks [2] - 1222:8, 1223:9</p> <p>Rittmaster [11] - 1061:7, 1062:4, 1088:17, 1088:20, 1091:14, 1091:19, 1092:23, 1096:7, 1102:16, 1102:17, 1107:24</p> <p>RMR [1] - 1295:7</p> <p>RN [1] - 1102:24</p> <p>Road [3] - 1269:5, 1269:7, 1269:8</p> <p>road [2] - 1157:17, 1181:24</p> <p>Robinson [1] - 1220:6</p> <p>Rock [2] - 1116:15, 1119:4</p> <p>Roland [11] - 1061:7, 1088:17, 1088:20, 1091:14, 1091:19, 1092:23, 1096:7, 1102:3, 1102:16, 1106:1, 1107:23</p> <p>role [4] - 1043:13, 1051:11, 1052:10, 1052:16</p>	<p>roles [2] - 1051:22, 1052:1</p> <p>room [8] - 1056:9, 1085:18, 1085:20, 1086:7, 1088:12, 1088:14, 1203:14, 1203:18</p> <p>Rouge [1] - 1055:22</p> <p>Round [1] - 1119:4</p> <p>round [1] - 1116:15</p> <p>route [1] - 1198:20</p> <p>routed [1] - 1201:7</p> <p>routine [3] - 1086:14, 1087:23, 1093:19</p> <p>routinely [3] - 1061:24, 1091:9, 1093:21</p> <p>row [3] - 1228:8, 1228:12, 1279:7</p> <p>roxi [1] - 1098:23</p> <p>Roxicodone [20] - 1062:8, 1064:19, 1065:20, 1066:4, 1067:4, 1067:8, 1067:15, 1069:3, 1069:16, 1073:23, 1094:15, 1097:22, 1098:1, 1098:4, 1098:14, 1111:20, 1153:13, 1158:17, 1160:1, 1250:16</p> <p>rule [28] - 1046:24, 1187:7, 1187:11, 1187:16, 1190:21, 1192:6, 1193:12, 1193:14, 1193:15, 1193:17, 1193:20, 1193:21, 1194:4, 1194:8, 1202:22, 1203:5, 1208:1, 1208:5, 1208:11, 1211:21, 1211:23, 1213:19, 1213:21, 1214:2, 1225:19, 1235:2, 1240:19</p> <p>Rule [15] - 1203:2, 1204:4, 1243:21, 1244:24, 1244:25, 1245:1, 1245:3, 1245:22, 1246:4, 1246:8, 1246:10, 1251:21, 1253:2, 1253:12, 1271:22</p> <p>rules [1] - 1228:2</p> <p>rulings [1] - 1055:10</p> <p>ruminating [1] - 1175:2</p> <p>run [5] - 1042:15, 1046:17, 1242:13, 1276:10</p> <p>running [3] - 1052:25, 1136:25, 1275:1</p> <p>runs [2] - 1052:24, 1167:5</p>
S		
<p>sacroiliac [1] - 1219:6</p> <p>safeguard [2] - 1120:3, 1120:5</p> <p>safeguards [1] - 1119:19</p> <p>safer [2] - 1129:9, 1135:11</p> <p>safety [1] - 1234:5</p> <p>Safety [1] - 1237:11</p> <p>Samantha [10] - 1039:17, 1042:7, 1045:12, 1238:19, 1247:13, 1248:12, 1248:20, 1249:7, 1249:18, 1249:23</p> <p>San [1] - 1269:2</p> <p>Sanchez [2] - 1295:3, 1295:7</p> <p>sat [2] - 1085:17, 1092:12</p> <p>satisfied [1] - 1284:8</p> <p>save [2] - 1287:23</p> <p>saved [1] - 1238:15</p> <p>Savillion [1] - 1294:4</p> <p>saw [52] - 1032:2, 1033:18, 1037:22, 1061:13, 1061:16, 1066:14, 1070:6, 1070:18, 1071:2, 1071:6, 1071:10, 1079:5, 1084:21, 1090:17, 1092:10,</p>		

<p>1097:8, 1104:23, 1107:21, 1108:4, 1143:4, 1143:6, 1143:17, 1146:13, 1147:17, 1147:23, 1149:20, 1152:20, 1157:7, 1171:14, 1180:7, 1182:3, 1184:10, 1204:15, 1208:15, 1208:18, 1209:12, 1216:3, 1216:10, 1216:14, 1217:6, 1222:12, 1236:13, 1236:14, 1237:21, 1237:22, 1239:12, 1246:1, 1246:2, 1280:3, 1287:4, 1287:5</p> <p>scale [4] - 1089:1, 1155:15, 1199:16, 1206:11</p> <p>scales [4] - 1091:1, 1091:2, 1206:15</p> <p>schedule [1] - 1252:24</p> <p>Schedule [4] - 1150:5, 1150:18, 1157:4, 1261:2</p> <p>Scheduled [1] - 1261:1</p> <p>schemes [1] - 1120:6</p> <p>schizophrenia [1] - 1134:2</p> <p>Schneider [1] - 1123:10</p> <p>school [5] - 1116:21, 1116:22, 1117:2, 1117:9, 1265:3</p> <p>School [2] - 1116:23, 1258:17</p> <p>sciatica [1] - 1169:21</p> <p>Science [2] - 1117:10, 1121:10</p> <p>scientists [1] - 1033:12</p> <p>sclerosis [1] - 1162:7</p> <p>scope [4] - 1183:24, 1184:7, 1184:8, 1185:8</p> <p>score [3] - 1148:1, 1148:12, 1155:9</p> <p>scored [4] - 1148:1, 1148:24, 1149:14, 1206:12</p> <p>screen [5] - 1103:25, 1104:2, 1111:16, 1139:22, 1171:4</p> <p>screening [1] - 1111:25</p> <p>script [2] - 1284:24, 1284:25</p> <p>scripts [5] - 1262:10, 1271:2, 1271:5, 1285:18, 1288:5</p> <p>search [1] - 1264:5</p> <p>seat [3] - 1115:9, 1164:17, 1254:4</p> <p>seated [3] - 1114:25, 1164:8, 1242:22</p> <p>second [31] - 1053:20, 1063:2, 1063:3, 1063:15, 1063:20, 1064:8, 1066:8, 1074:7, 1076:14, 1099:10, 1104:3, 1108:14, 1112:15, 1119:25, 1121:18, 1122:14, 1126:5, 1151:19, 1177:19, 1178:18, 1180:1, 1182:12, 1193:10, 1217:18, 1228:1, 1241:10, 1251:9, 1256:7, 1262:15, 1280:5, 1280:11</p> <p>secondly [1] - 1048:16</p> <p>section [7] - 1032:2, 1047:11, 1179:20, 1208:1, 1228:1, 1255:21, 1261:21</p> <p>Section [1] - 1255:21</p> <p>sedatives [1] - 1158:11</p> <p>see [88] - 1032:11, 1033:9, 1033:13, 1037:2, 1037:19, 1040:20, 1044:12, 1047:2, 1068:19, 1075:21, 1079:7, 1080:20, 1081:11, 1083:2, 1083:4, 1083:17, 1091:6, 1092:4, 1093:11, 1096:8, 1097:5, 1097:10, 1100:4, 1101:14, 1105:17, 1108:6, 1108:22, 1108:24, 1113:25, 1131:23, 1132:2, 1132:23, 1138:11, 1141:11, 1142:20, 1142:21, 1142:22, 1142:23, 1142:24, 1142:25, 1142:26, 1142:27, 1142:28, 1142:29, 1142:30, 1142:31, 1142:32, 1142:33, 1142:34, 1142:35, 1142:36, 1142:37, 1142:38, 1142:39, 1142:40, 1142:41, 1142:42, 1142:43, 1142:44, 1142:45, 1142:46, 1142:47, 1142:48, 1142:49, 1142:50, 1142:51, 1142:52, 1142:53, 1142:54, 1142:55, 1142:56, 1142:57, 1142:58, 1142:59, 1142:60, 1142:61, 1142:62, 1142:63, 1142:64, 1142:65, 1142:66, 1142:67, 1142:68, 1142:69, 1142:70, 1142:71, 1142:72, 1142:73, 1142:74, 1142:75, 1142:76, 1142:77, 1142:78, 1142:79, 1142:80, 1142:81, 1142:82, 1142:83, 1142:84, 1142:85, 1142:86, 1142:87, 1142:88, 1142:89, 1142:90, 1142:91, 1142:92, 1142:93, 1142:94, 1142:95, 1142:96, 1142:97, 1142:98, 1142:99, 1142:100, 1142:101, 1142:102, 1142:103, 1142:104, 1142:105, 1142:106, 1142:107, 1142:108, 1142:109, 1142:110, 1142:111, 1142:112, 1142:113, 1142:114, 1142:115, 1142:116, 1142:117, 1142:118, 1142:119, 1142:120, 1142:121, 1142:122, 1142:123, 1142:124, 1142:125, 1142:126, 1142:127, 1142:128, 1142:129, 1142:130, 1142:131, 1142:132, 1142:133, 1142:134, 1142:135, 1142:136, 1142:137, 1142:138, 1142:139, 1142:140, 1142:141, 1142:142, 1142:143, 1142:144, 1142:145, 1142:146, 1142:147, 1142:148, 1142:149, 1142:150, 1142:151, 1142:152, 1142:153, 1142:154, 1142:155, 1142:156, 1142:157, 1142:158, 1142:159, 1142:160, 1142:161, 1142:162, 1142:163, 1142:164, 1142:165, 1142:166, 1142:167, 1142:168, 1142:169, 1142:170, 1142:171, 1142:172, 1142:173, 1142:174, 1142:175, 1142:176, 1142:177, 1142:178, 1142:179, 1142:180, 1142:181, 1142:182, 1142:183, 1142:184, 1142:185, 1142:186, 1142:187, 1142:188, 1142:189, 1142:190, 1142:191, 1142:192, 1142:193, 1142:194, 1142:195, 1142:196, 1142:197, 1142:198, 1142:199, 1142:200, 1142:201, 1142:202, 1142:203, 1142:204, 1142:205, 1142:206, 1142:207, 1142:208, 1142:209, 1142:210, 1142:211, 1142:212, 1142:213, 1142:214, 1142:215, 1142:216, 1142:217, 1142:218, 1142:219, 1142:220, 1142:221, 1142:222, 1142:223, 1142:224, 1142:225, 1142:226, 1142:227, 1142:228, 1142:229, 1142:230, 1142:231, 1142:232, 1142:233, 1142:234, 1142:235, 1142:236, 1142:237, 1142:238, 1142:239, 1142:240, 1142:241, 1142:242, 1142:243, 1142:244, 1142:245, 1142:246, 1142:247, 1142:248, 1142:249, 1142:250, 1142:251, 1142:252, 1142:253, 1142:254, 1142:255, 1142:256, 1142:257, 1142:258, 1142:259, 1142:260, 1142:261, 1142:262, 1142:263, 1142:264, 1142:265, 1142:266, 1142:267, 1142:268, 1142:269, 1142:270, 1142:271, 1142:272, 1142:273, 1142:274, 1142:275, 1142:276, 1142:277, 1142:278, 1142:279, 1142:280, 1142:281, 1142:282, 1142:283, 1142:284, 1142:285, 1142:286, 1142:287, 1142:288, 1142:289, 1142:290, 1142:291, 1142:292, 1142:293, 1142:294, 1142:295, 1142:296, 1142:297, 1142:298, 1142:299, 1142:300, 1142:301, 1142:302, 1142:303, 1142:304, 1142:305, 1142:306, 1142:307, 1142:308, 1142:309, 1142:310, 1142:311, 1142:312, 1142:313, 1142:314, 1142:315, 1142:316, 1142:317, 1142:318, 1142:319, 1142:320, 1142:321, 1142:322, 1142:323, 1142:324, 1142:325, 1142:326, 1142:327, 1142:328, 1142:329, 1142:330, 1142:331, 1142:332, 1142:333, 1142:334, 1142:335, 1142:336, 1142:337, 1142:338, 1142:339, 1142:340, 1142:341, 1142:342, 1142:343, 1142:344, 1142:345, 1142:346, 1142:347, 1142:348, 1142:349, 1142:350, 1142:351, 1142:352, 1142:353, 1142:354, 1142:355, 1142:356, 1142:357, 1142:358, 1142:359, 1142:360, 1142:361, 1142:362, 1142:363, 1142:364, 1142:365, 1142:366, 1142:367, 1142:368, 1142:369, 1142:370, 1142:371, 1142:372, 1142:373, 1142:374, 1142:375, 1142:376, 1142:377, 1142:378, 1142:379, 1142:380, 1142:381, 1142:382, 1142:383, 1142:384, 1142:385, 1142:386, 1142:387, 1142:388, 1142:389, 1142:390, 1142:391, 1142:392, 1142:393, 1142:394, 1142:395, 1142:396, 1142:397, 1142:398, 1142:399, 1142:400, 1142:401, 1142:402, 1142:403, 1142:404, 1142:405, 1142:406, 1142:407, 1142:408, 1142:409, 1142:410, 1142:411, 1142:412, 1142:413, 1142:414, 1142:415, 1142:416, 1142:417, 1142:418, 1142:419, 1142:420, 1142:421, 1142:422, 1142:423, 1142:424, 1142:425, 1142:426, 1142:427, 1142:428, 1142:429, 1142:430, 1142:431, 1142:432, 1142:433, 1142:434, 1142:435, 1142:436, 1142:437, 1142:438, 1142:439, 1142:440, 1142:441, 1142:442, 1142:443, 1142:444, 1142:445, 1142:446, 1142:447, 1142:448, 1142:449, 1142:450, 1142:451, 1142:452, 1142:453, 1142:454, 1142:455, 1142:456, 1142:457, 1142:458, 1142:459, 1142:460, 1142:461, 1142:462, 1142:463, 1142:464, 1142:465, 1142:466, 1142:467, 1142:468, 1142:469, 1142:470, 1142:471, 1142:472, 1142:473, 1142:474, 1142:475, 1142:476, 1142:477, 1142:478, 1142:479, 1142:480, 1142:481, 1142:482, 1142:483, 1142:484, 1142:485, 1142:486, 1142:487, 1142:488, 1142:489, 1142:490, 1142:491, 1142:492, 1142:493, 1142:494, 1142:495, 1142:496, 1142:497, 1142:498, 1142:499, 1142:500, 1142:501, 1142:502, 1142:503, 1142:504, 1142:505, 1142:506, 1142:507, 1142:508, 1142:509, 1142:510, 1142:511, 1142:512, 1142:513, 1142:514, 1142:515, 1142:516, 1142:517, 1142:518, 1142:519, 1142:520, 1142:521, 1142:522, 1142:523, 1142:524, 1142:525, 1142:526, 1142:527, 1142:528, 1142:529, 1142:530, 1142:531, 1142:532, 1142:533, 1142:534, 1142:535, 1142:536, 1142:537, 1142:538, 1142:539, 1142:540, 1142:541, 1142:542, 1142:543, 1142:544, 1142:545, 1142:546, 1142:547, 1142:548, 1142:549, 1142:550, 1142:551, 1142:552, 1142:553, 1142:554, 1142:555, 1142:556, 1142:557, 1142:558, 1142:559, 1142:560, 1142:561, 1142:562, 1142:563, 1142:564, 1142:565, 1142:566, 1142:567, 1142:568, 1142:569, 1142:570, 1142:571, 1142:572, 1142:573, 1142:574, 1142:575, 1142:576, 1142:577, 1142:578, 1142:579, 1142:580, 1142:581, 1142:582, 1142:583, 1142:584, 1142:585, 1142:586, 1142:587, 1142:588, 1142:589, 1142:590, 1142:591, 1142:592, 1142:593, 1142:594, 1142:595, 1142:596, 1142:597, 1142:598, 1142:599, 1142:600, 1142:601, 1142:602, 1142:603, 1142:604, 1142:605, 1142:606, 1142:607, 1142:608, 1142:609, 1142:610, 1142:611, 1142:612, 1142:613, 1142:614, 1142:615, 1142:616, 1142:617, 1142:618, 1142:619, 1142:620, 1142:621, 1142:622, 1142:623, 1142:624, 1142:625, 1142:626, 1142:627, 1142:628, 1142:629, 1142:630, 1142:631, 1142:632, 1142:633, 1142:634, 1142:635, 1142:636, 1142:637, 1142:638, 1142:639, 1142:640, 1142:641, 1142:642, 1142:643, 1142:644, 1142:645, 1142:646, 1142:647, 1142:648, 1142:649, 1142:650, 1142:651, 1142:652, 1142:653, 1142:654, 1142:655, 1142:656, 1142:657, 1142:658, 1142:659, 1142:660, 1142:661, 1142:662, 1142:663, 1142:664, 1142:665, 1142:666, 1142:667, 1142:668, 1142:669, 1142:670, 1142:671, 1142:672, 1142:673, 1142:674, 1142:675, 1142:676, 1142:677, 1142:678, 1142:679, 1142:680, 1142:681, 1142:682, 1142:683, 1142:684, 1142:685, 1142:686, 1142:687, 1142:688, 1142:689, 1142:690, 1142:691, 1142:692, 1142:693, 1142:694, 1142:695, 1142:696, 1142:697, 1142:698, 1142:699, 1142:700, 1142:701, 1142:702, 1142:703, 1142:704, 1142:705, 1142:706, 1142:707, 1142:708, 1142:709, 1142:710, 1142:711, 1142:712, 1142:713, 1142:714, 1142:715, 1142:716, 1142:717, 1142:718, 1142:719, 1142:720, 1142:721, 1142:722, 1142:723, 1142:724, 1142:725, 1142:726, 1142:727, 1142:728, 1142:729, 1142:730, 1142:731, 1142:732, 1142:733, 1142:734, 1142:735, 1142:736, 1142:737, 1142:738, 1142:739, 1142:740, 1142:741, 1142:742, 1142:743, 1142:744, 1142:745, 1142:746, 1142:747, 1142:748, 1142:749, 1142:750, 1142:751, 1142:752, 1142:753, 1142:754, 1142:755, 1142:756, 1142:757, 1142:758, 1142:759, 1142:760, 1142:761, 1142:762, 1142:763, 1142:764, 1142:765, 1142:766, 1142:767, 1142:768, 1142:769, 1142:770, 1142:771, 1142:772, 1142:773, 1142:774, 1142:775, 1142:776, 1142:777, 1142:778, 1142:779, 1142:780, 1142:781, 1142:782, 1142:783, 1142:784, 1142:785, 1142:786, 1142:787, 1142:788, 1142:789, 1142:790, 1142:791, 1142:792, 1142:793, 1142:794, 1142:795, 1142:796, 1142:797, 1142:798, 1142:799, 1142:800, 1142:801, 1142:802, 1142:803, 1142:804, 1142:805, 1142:806, 1142:807, 1142:808, 1142:809, 1142:810, 1142:811, 1142:812, 1142:813, 1142:814, 1142:815, 1142:816, 1142:817, 1142:818, 1142:819, 1142:820, 1142:821, 1142:822, 1142:823, 1142:824, 1142:825, 1142:826, 1142:827, 1142:828, 1142:829, 1142:830, 1142:831, 1142:832, 1142:833, 1142:834, 1142:835, 1142:836, 1142:837, 1142:838, 1142:839, 1142:840, 1142:841, 1142:842, 1142:843, 1142:844, 1142:845, 1142:846, 1142:847, 1142:848, 1142:849, 1142:850, 1142:851, 1142:852, 1142:853, 1142:854, 1142:855, 1142:856, 1142:857, 1142:858, 1142:859, 1142:860, 1142:861, 1142:862, 1142:863, 1142:864, 1142:865, 1142:866, 1142:867, 1142:868, 1142:869, 1142:870, 1142:871, 1142:872, 1142:873, 1142:874, 1142:875, 1142:876, 1142:877, 1142:878, 1142:879, 1142:880, 1142:881, 1142:882, 1142:883, 1142:884, 1142:885, 1142:886, 1142:887, 1142:888, 1142:889, 1142:890, 1142:891, 1142:892, 1142:893, 1142:894, 1142:895, 1142:896, 1142:897, 1142:898, 1142:899, 1142:900, 1142:901, 1142:902, 1142:903, 1142:904, 1142:905, 1142:906, 1142:907, 1142:908, 1142:909, 1142:910, 1142:911, 1142:912, 1142:913, 1142:914, 1142:915, 1142:916, 1142:917, 1142:918, 1142:919, 1142:920, 1142:921, 1142:922, 1142:923, 1142:924, 1142:925, 1142:926, 1142:927, 1142:928, 1142:929, 1142:930, 1142:931, 1142:932, 1142:933, 1142:934, 1142:935, 1142:936, 1142:937, 1142:938, 1142:939, 1142:940, 1142:941, 1142:942, 1142:943, 1142:944, 1142:945, 1142:946, 1142:947, 1142:948, 1142:949, 1142:950, 1142:951, 1142:952, 1142:953, 1142:954, 1142:955, 1142:956, 1142:957, 1142:958, 1142:959, 1142:960, 1142:961, 1142:962, 1142:963, 1142:964, 1142:965, 1142:966, 1142:967, 1142:968, 1142:969, 1142:970, 1142:971, 1142:972, 1142:973, 1142:974, 1142:975, 1142:976, 1142:977, 1142:978, 1142:979, 1142:980, 1142:981, 1142:982, 1142:983, 1142:984, 1142:985, 1142:986, 1142:987, 1142:988, 1142:989, 1142:990, 1142:991, 1142:992, 1142:993, 1142:994, 1142:995, 1142:996, 1142:997, 1142:998, 1142:999, 1142:1000</p>	<p>1143:13, 1144:5, 1144:8, 1144:13, 1150:16, 1150:25, 1151:4, 1151:8, 1151:12, 1154:14, 1158:3, 1158:16, 1158:23, 1159:22, 1161:10, 1161:20, 1164:17, 1166:14, 1167:14, 1168:18, 1169:8, 1169:10, 1181:6, 1183:3, 1186:3, 1189:6, 1198:22, 1200:14, 1202:13, 1202:18, 1203:14, 1204:11, 1207:13, 1208:19, 1208:22, 1208:24, 1209:4, 1216:13, 1223:10, 1228:11, 1231:2, 1235:17, 1237:5, 1247:5, 1247:8, 1249:4, 1252:19, 1268:18, 1274:21, 1281:17, 1281:24, 1284:14, 1294:8</p> <p>seeing [20] - 1040:3, 1057:13, 1075:4, 1097:21, 1098:3, 1104:10, 1104:22, 1105:5, 1111:12, 1146:19, 1147:3, 1147:19,</p>
---	--

<p>significant [7] - 1165:9, 1165:11, 1177:11, 1192:4, 1192:5, 1247:3, 1290:1</p> <p>signs [1] - 1149:3</p> <p>similar [6] - 1095:5, 1128:15, 1129:25, 1166:6, 1221:18, 1259:2</p> <p>simple [1] - 1129:19</p> <p>simply [6] - 1036:6, 1050:10, 1153:16, 1155:12, 1271:24, 1289:2</p> <p>single [4] - 1048:16, 1049:24, 1060:7, 1202:18</p> <p>sister [1] - 1039:22</p> <p>sit [2] - 1112:3, 1172:25</p> <p>sites [2] - 1166:22, 1166:24</p> <p>sits [1] - 1120:24</p> <p>situation [17] - 1080:12, 1132:16, 1137:8, 1153:22, 1165:19, 1166:2, 1174:5, 1175:3, 1188:15, 1188:19, 1200:4, 1201:6, 1212:25, 1215:4, 1239:6, 1250:6</p> <p>situations [2] - 1214:6, 1251:4</p> <p>six [15] - 1060:2, 1062:23, 1062:24, 1074:7, 1074:8, 1074:12, 1087:4, 1089:1, 1101:19, 1101:24, 1219:5, 1269:16, 1290:13, 1290:14, 1290:17</p> <p>six-month [1] - 1060:2</p> <p>six-year [1] - 1062:24</p> <p>skeleton [1] - 1107:8</p> <p>skill [1] - 1142:18</p> <p>skills [5] - 1036:22, 1122:4, 1129:24, 1133:4</p> <p>skip [2] - 1228:8, 1228:12</p> <p>sky [2] - 1175:1</p> <p>sleep [1] - 1211:7</p> <p>slowly [2] - 1128:20, 1214:19</p> <p>small [5] - 1084:21, 1207:20, 1209:23, 1244:3, 1267:18</p> <p>smaller [1] - 1091:3</p> <p>smarter [2] - 1128:18, 1128:20</p> <p>smiley [1] - 1206:18</p> <p>so-called [2] - 1107:7, 1159:15</p> <p>so.. [1] - 1293:15</p> <p>SOAPP [15] - 1108:19, 1126:9, 1126:11, 1133:19, 1145:18, 1146:21, 1147:18, 1147:23, 1148:6, 1148:10, 1148:24, 1149:15, 1149:21, 1155:9, 1155:14</p> <p>SOAPPs [1] - 1111:23</p> <p>social [1] - 1211:4</p> <p>society [1] - 1222:1</p> <p>Society [9] - 1122:20, 1122:23, 1122:25, 1191:17, 1221:19, 1221:22, 1221:25, 1224:18, 1234:22</p> <p>Society's [2] - 1220:2, 1234:10</p> <p>sold [9] - 1083:12, 1084:8, 1084:12, 1119:11, 1195:10, 1267:5, 1267:6, 1267:13, 1267:18</p> <p>sole [1] - 1122:5</p> <p>solemnly [2] - 1115:5, 1253:25</p> <p>solved [1] - 1050:4</p> <p>Soma [5] - 1062:9, 1158:19, 1159:2, 1159:17, 1160:2</p>	<p>Somas [1] - 1111:20</p> <p>someone [4] - 1120:24, 1170:19, 1277:15, 1284:9</p> <p>sometime [3] - 1060:12, 1081:20, 1289:7</p> <p>sometimes [16] - 1041:18, 1106:6, 1109:2, 1109:12, 1110:12, 1121:20, 1158:21, 1189:9, 1196:15, 1197:25, 1225:6, 1225:7, 1225:9, 1228:7, 1232:3, 1287:13</p> <p>somewhat [1] - 1050:19</p> <p>somewhere [1] - 1264:22</p> <p>son [4] - 1071:24, 1089:11, 1096:6, 1101:6</p> <p>song [1] - 1130:19</p> <p>sorry [40] - 1038:10, 1054:11, 1058:17, 1065:25, 1068:7, 1072:3, 1076:1, 1082:18, 1083:16, 1093:3, 1097:2, 1100:21, 1104:17, 1105:6, 1111:11, 1121:15, 1121:16, 1123:8, 1123:15, 1126:15, 1145:7, 1151:1, 1155:16, 1156:20, 1175:22, 1179:13, 1185:12, 1212:10, 1250:3, 1250:15, 1250:18, 1255:21, 1267:7, 1267:9, 1268:8, 1277:14, 1278:17, 1284:19, 1293:21</p> <p>sort [2] - 1093:18, 1252:5</p> <p>sounds [1] - 1129:25</p> <p>sources [1] - 1137:1</p> <p>South [1] - 1059:22</p> <p>Southern [2] - 1257:2, 1258:18</p> <p>Southwest [2] - 1117:3, 1122:18</p> <p>Spady [4] - 1063:5, 1063:6, 1063:7, 1101:23</p> <p>spanned [2] - 1186:18, 1186:21</p> <p>sparse [1] - 1181:16</p> <p>spasms [1] - 1176:2</p> <p>speaking [4] - 1033:4, 1044:9, 1070:22, 1254:5</p> <p>special [5] - 1117:17, 1167:4, 1167:6, 1260:22, 1276:17</p> <p>specialists [2] - 1132:9, 1218:12</p> <p>specialized [1] - 1117:20</p> <p>specialty [1] - 1117:19</p> <p>specific [5] - 1037:15, 1041:24, 1051:10, 1169:22, 1232:11</p> <p>specifically [6] - 1036:14, 1037:18, 1151:17, 1247:20, 1279:21, 1284:17</p> <p>specifics [2] - 1041:2, 1213:3</p> <p>spectrometry [1] - 1140:2</p> <p>spectrum [1] - 1233:9</p> <p>speculation [1] - 1069:9</p> <p>speculative [1] - 1050:19</p> <p>Speculative [1] - 1068:3</p> <p>spell [4] - 1116:11, 1123:22, 1254:18, 1288:24</p> <p>spend [3] - 1108:11, 1115:18, 1241:18</p> <p>spending [1] - 1042:11</p> <p>spends [1] - 1108:13</p> <p>spent [10] - 1048:2, 1091:18, 1091:23, 1107:23, 1107:24, 1107:25, 1108:3, 1108:5, 1238:14</p> <p>spinal [1] - 1119:25</p>	<p>spine [5] - 1089:24, 1167:5, 1200:9, 1213:12, 1218:15</p> <p>spiny [1] - 1200:8</p> <p>split [1] - 1052:1</p> <p>spoken [1] - 1286:24</p> <p>spondylitis [1] - 1162:6</p> <p>spot [1] - 1163:19</p> <p>spots [1] - 1101:2</p> <p>spread [2] - 1166:21, 1166:23</p> <p>spring [2] - 1098:9, 1288:12</p> <p>squarely [1] - 1039:15</p> <p>staff [30] - 1063:21, 1064:9, 1065:1, 1065:17, 1066:12, 1066:18, 1068:15, 1068:20, 1069:15, 1074:15, 1075:8, 1075:12, 1075:21, 1076:18, 1081:5, 1081:10, 1093:6, 1093:8, 1093:12, 1181:15, 1182:4, 1196:15, 1203:24, 1224:6, 1230:21, 1238:15, 1251:25, 1252:1, 1252:2, 1291:25</p> <p>staffs [1] - 1120:6</p> <p>Stamp [1] - 1223:3</p> <p>stand [4] - 1047:9, 1115:4, 1173:1, 1178:9</p> <p>standard [79] - 1037:2, 1037:17, 1042:3, 1042:6, 1043:7, 1045:7, 1045:18, 1046:9, 1046:10, 1046:13, 1046:20, 1051:14, 1051:16, 1054:5, 1120:25, 1126:14, 1126:16, 1128:12, 1128:13, 1128:14, 1128:19, 1128:22, 1144:15, 1144:19, 1144:25, 1145:2, 1145:3, 1153:3, 1153:6, 1153:9, 1153:17, 1154:10, 1154:11, 1157:1, 1157:20, 1179:23, 1183:8, 1183:9, 1184:15, 1193:3, 1193:5, 1193:13, 1193:14, 1193:22, 1193:24, 1202:25, 1203:2, 1203:4, 1203:6, 1208:7, 1208:9, 1211:17, 1211:23, 1211:25, 1213:24, 1226:13, 1233:6, 1234:9, 1234:21, 1240:14, 1240:23, 1243:11, 1243:20, 1243:21, 1244:8, 1244:11, 1244:12, 1244:13, 1244:20, 1244:21, 1245:13, 1245:22, 1246:5, 1246:9, 1246:20, 1251:2, 1263:3, 1263:5, 1263:8</p> <p>standards [7] - 1041:10, 1243:12, 1244:10, 1245:3, 1245:21, 1246:3, 1246:8</p> <p>standing [1] - 1053:10</p> <p>standpoint [1] - 1170:7</p> <p>start [14] - 1031:22, 1048:2, 1094:22, 1119:13, 1124:12, 1127:21, 1130:20, 1131:15, 1137:5, 1151:2, 1243:9, 1278:2, 1294:17</p> <p>started [25] - 1031:3, 1056:5, 1056:6, 1056:18, 1071:21, 1071:23, 1072:5, 1098:3, 1098:5, 1104:10, 1105:5, 1111:12, 1119:4, 1120:17, 1129:2, 1129:4, 1129:9, 1159:15, 1256:21, 1270:23, 1271:8, 1271:13, 1287:12, 1290:23, 1290:24</p> <p>starting [1] - 1269:4</p> <p>state [14] - 1046:12, 1116:8, 1124:9, 1161:24, 1166:5, 1192:17, 1193:15,</p>
---	---	--

<p>1202:25, 1208:7, 1254:18, 1254:22, 1261:17, 1264:18, 1284:20</p> <p>State [10] - 1117:3, 1117:4, 1187:6, 1202:21, 1209:22, 1210:16, 1224:14, 1280:21, 1284:17</p> <p>statement [6] - 1215:12, 1220:3, 1240:11, 1257:17, 1263:12, 1275:22</p> <p>statements [6] - 1257:15, 1271:23, 1272:1, 1272:2, 1272:4</p> <p>States [13] - 1115:2, 1253:15, 1255:11, 1255:17, 1255:22, 1256:1, 1256:24, 1257:19, 1257:23, 1257:24, 1258:7, 1258:25, 1259:8</p> <p>station [1] - 1124:25</p> <p>step [5] - 1112:18, 1163:24, 1245:8, 1252:15, 1292:23</p> <p>stepped [3] - 1193:25, 1235:11, 1245:6</p> <p>steps [1] - 1199:16</p> <p>steroid [1] - 1170:1</p> <p>Steven [1] - 1123:10</p> <p>still [23] - 1064:10, 1064:11, 1077:9, 1078:15, 1087:25, 1090:22, 1113:16, 1119:16, 1125:5, 1137:18, 1148:25, 1155:18, 1173:12, 1173:20, 1215:19, 1240:23, 1270:7, 1284:1, 1288:11, 1293:17, 1294:12</p> <p>stimulate [1] - 1218:17</p> <p>stimulators [1] - 1218:17</p> <p>stolen [1] - 1136:20</p> <p>stop [2] - 1152:24, 1174:23</p> <p>stopped [5] - 1057:2, 1060:20, 1096:5, 1189:18, 1213:7</p> <p>Store [1] - 1269:8</p> <p>straight [1] - 1202:5</p> <p>straighten [1] - 1206:7</p> <p>strategies [1] - 1129:24</p> <p>street [4] - 1116:13, 1160:14, 1160:20, 1274:20</p> <p>Street [1] - 1059:23</p> <p>strength [1] - 1130:11</p> <p>strengthen [2] - 1200:3, 1200:4</p> <p>stress [2] - 1133:4, 1134:3</p> <p>stressed [1] - 1125:13</p> <p>stressor [3] - 1125:18, 1134:9, 1134:10</p> <p>stressors [1] - 1122:2</p> <p>stretching [13] - 1072:1, 1182:5, 1182:7, 1182:8, 1182:13, 1201:7, 1201:9, 1201:16, 1201:20, 1202:4, 1202:9, 1203:8, 1231:8</p> <p>strict [1] - 1190:19</p> <p>strikes [1] - 1050:12</p> <p>strips [1] - 1220:19</p> <p>strong [2] - 1124:21, 1155:5</p> <p>stronger [1] - 1201:16</p> <p>structurally [1] - 1128:7</p> <p>structure [1] - 1201:17</p> <p>structured [1] - 1122:3</p> <p>stuck [3] - 1031:3, 1055:22, 1227:12</p> <p>studied [3] - 1190:19, 1193:1, 1265:13</p> <p>studies [2] - 1265:14, 1266:21</p>	<p>study [3] - 1191:8, 1265:12, 1266:4</p> <p>stuff [2] - 1036:13, 1198:1</p> <p>sub [1] - 1117:19</p> <p>subject [4] - 1048:6, 1165:17, 1225:23, 1292:14</p> <p>subjective [5] - 1127:2, 1138:16, 1144:4, 1146:21, 1155:9</p> <p>subjectively [1] - 1140:6</p> <p>submit [2] - 1044:18, 1044:19</p> <p>Suboxone [13] - 1121:19, 1121:20, 1121:24, 1121:25, 1154:6, 1154:9, 1189:22, 1190:3, 1248:17, 1248:22, 1249:2, 1249:9, 1249:11</p> <p>subsequent [1] - 1258:4</p> <p>subsequently [1] - 1134:17</p> <p>subspecialize [1] - 1117:21</p> <p>substance [10] - 1124:14, 1133:23, 1152:11, 1212:14, 1213:11, 1219:23, 1220:8, 1275:20, 1280:22, 1285:25</p> <p>substances [21] - 1126:13, 1134:23, 1135:6, 1135:9, 1135:10, 1137:16, 1145:13, 1147:13, 1152:3, 1176:24, 1182:10, 1182:21, 1183:24, 1184:24, 1185:4, 1185:8, 1219:24, 1260:23, 1261:2, 1275:10, 1280:2</p> <p>substantial [2] - 1074:5, 1259:11</p> <p>substantially [1] - 1068:20</p> <p>substituted [2] - 1159:11, 1187:13</p> <p>succeeding [2] - 1078:11, 1096:8</p> <p>suffer [1] - 1067:25</p> <p>suffering [18] - 1067:20, 1069:20, 1070:3, 1089:16, 1097:6, 1125:19, 1125:23, 1125:25, 1126:2, 1126:3, 1126:6, 1143:7, 1143:23, 1155:20, 1162:16, 1170:21, 1176:4</p> <p>sufficient [4] - 1141:4, 1142:7, 1261:23, 1283:22</p> <p>sufficiently [1] - 1142:4</p> <p>suggest [6] - 1124:16, 1146:16, 1149:2, 1152:5, 1156:17, 1179:7</p> <p>suggested [5] - 1070:16, 1077:12, 1101:18, 1166:20, 1249:10</p> <p>suicide [7] - 1177:3, 1177:7, 1177:9, 1177:10, 1177:14, 1177:25, 1178:11</p> <p>suicides [1] - 1176:25</p> <p>summary [7] - 1032:14, 1032:21, 1033:1, 1033:18, 1035:21, 1037:5, 1043:19</p> <p>summer [3] - 1094:20, 1117:25</p> <p>summers [1] - 1063:4</p> <p>Sunday [1] - 1186:3</p> <p>superficial [1] - 1139:10</p> <p>supply [3] - 1137:18, 1261:22, 1262:10</p> <p>support [7] - 1053:19, 1053:25, 1144:8, 1144:11, 1176:12, 1176:18, 1201:17</p> <p>supporting [1] - 1182:11</p> <p>supposed [9] - 1106:24, 1111:16, 1140:1, 1208:12, 1210:1, 1216:12, 1216:15, 1232:20, 1235:20</p> <p>surely [4] - 1197:11, 1206:24, 1207:18, 1226:19</p>	<p>surgeon [1] - 1233:2</p> <p>surgery [13] - 1090:12, 1090:13, 1090:15, 1090:17, 1090:19, 1096:15, 1097:7, 1168:25, 1169:24, 1169:25, 1170:6, 1170:14, 1216:19</p> <p>surgically [1] - 1169:22</p> <p>surprise [2] - 1091:18, 1091:21</p> <p>surprised [1] - 1277:4</p> <p>surprisingly [1] - 1155:25</p> <p>suspect [2] - 1137:24, 1141:7</p> <p>suspicious [1] - 1241:21</p> <p>sustain [7] - 1055:5, 1059:5, 1068:4, 1098:17, 1111:4, 1188:13, 1263:18</p> <p>sustained [1] - 1078:22</p> <p>swear [2] - 1115:5, 1253:25</p> <p>swimming [1] - 1170:9</p> <p>swing [1] - 1148:19</p> <p>swings [4] - 1103:17, 1105:19, 1148:7, 1148:14</p> <p>swore [1] - 1253:21</p> <p>sworn [2] - 1115:25, 1254:8</p> <p>symptom [2] - 1143:13, 1155:19</p> <p>symptomatic [1] - 1168:1</p> <p>symptoms [5] - 1127:2, 1134:15, 1138:20, 1154:7</p> <p>synthetic [7] - 1127:13, 1127:19, 1127:20, 1127:21, 1128:3, 1128:4</p> <p>system [1] - 1166:12</p> <p>systematically [1] - 1161:6</p>
<p style="text-align: center;">T</p>		
<p>T's [1] - 1125:12</p> <p>table [2] - 1091:5, 1092:12</p> <p>tablets [2] - 1062:9, 1073:24</p> <p>talks [6] - 1040:2, 1208:1, 1214:2, 1224:2, 1240:12, 1243:14</p> <p>tape [2] - 1107:25, 1108:5</p> <p>taught [1] - 1033:17</p> <p>teach [1] - 1175:11</p> <p>tease [1] - 1149:6</p> <p>technician [1] - 1290:8</p> <p>telephone [12] - 1271:11, 1276:24, 1277:13, 1281:23, 1282:23, 1283:7, 1283:10, 1285:8, 1285:10, 1287:7, 1288:13, 1289:8</p> <p>temper [2] - 1109:9, 1109:12</p> <p>temperature [5] - 1164:4, 1164:6, 1164:7, 1164:9, 1164:11</p> <p>ten [5] - 1077:14, 1087:10, 1143:18, 1155:10, 1241:14</p> <p>tends [1] - 1044:8</p> <p>tension [1] - 1106:12</p> <p>term [14] - 1045:17, 1111:24, 1127:5, 1136:9, 1136:11, 1160:14, 1166:25, 1183:1, 1200:11, 1202:14, 1223:19, 1225:4, 1230:5, 1243:25</p> <p>terminate [1] - 1153:7</p> <p>terms [20] - 1034:8, 1049:16, 1050:8, 1091:16, 1099:16, 1118:17, 1124:13, 1137:22, 1141:5, 1144:9, 1160:23, 1169:4, 1190:12, 1196:15, 1210:24,</p>		

1225:4, 1249:25, 1293:6, 1293:7
test [63] - 1079:6, 1079:7, 1080:1, 1080:7, 1080:9, 1080:10, 1080:11, 1080:18, 1081:8, 1081:16, 1101:12, 1108:19, 1118:13, 1135:14, 1136:11, 1136:14, 1136:18, 1136:19, 1139:17, 1139:20, 1139:21, 1139:23, 1140:2, 1141:16, 1141:23, 1142:4, 1142:8, 1142:15, 1142:22, 1143:3, 1146:4, 1146:7, 1146:10, 1146:14, 1146:15, 1146:21, 1146:22, 1146:24, 1147:1, 1147:21, 1147:23, 1148:24, 1148:25, 1149:20, 1179:14, 1179:15, 1220:14, 1234:3, 1234:5, 1245:18, 1246:2, 1274:18, 1274:19, 1274:20, 1274:24, 1275:7, 1276:2, 1276:4, 1276:12
testified [26] - 1044:6, 1044:22, 1057:16, 1059:6, 1060:17, 1061:17, 1062:11, 1071:21, 1072:8, 1072:14, 1072:17, 1075:19, 1077:5, 1093:16, 1093:19, 1115:25, 1123:5, 1214:5, 1219:13, 1224:24, 1229:18, 1242:10, 1246:1, 1247:21, 1254:8, 1275:17
testify [8] - 1044:15, 1045:4, 1045:6, 1051:14, 1052:4, 1255:11, 1256:2, 1257:5
testifying [8] - 1043:23, 1045:4, 1051:16, 1051:17, 1053:19, 1081:17, 1224:22, 1236:20
testimony [35] - 1039:17, 1044:6, 1053:23, 1054:12, 1054:23, 1060:8, 1062:20, 1067:9, 1074:10, 1084:1, 1085:4, 1094:4, 1097:20, 1099:15, 1115:5, 1123:25, 1124:6, 1124:12, 1124:14, 1128:11, 1168:4, 1186:2, 1190:14, 1219:14, 1221:9, 1236:23, 1238:22, 1247:15, 1253:25, 1255:12, 1255:13, 1259:18, 1271:22, 1282:18, 1294:14
testing [28] - 1049:18, 1140:15, 1146:3, 1179:11, 1184:5, 1193:9, 1193:11, 1194:6, 1194:8, 1194:19, 1194:20, 1194:24, 1195:1, 1195:4, 1195:10, 1196:1, 1219:12, 1220:3, 1220:10, 1220:18, 1231:18, 1233:24, 1234:11, 1234:14, 1234:19, 1234:23, 1245:12, 1246:7
tests [11] - 1079:14, 1081:4, 1139:14, 1150:8, 1193:22, 1195:7, 1245:25, 1276:5, 1276:10, 1276:13, 1276:15
Texas [82] - 1046:24, 1116:15, 1116:22, 1117:3, 1117:4, 1117:10, 1119:8, 1120:13, 1120:19, 1122:20, 1122:22, 1122:25, 1123:12, 1123:25, 1124:5, 1124:7, 1124:9, 1147:8, 1147:12, 1179:20, 1187:7, 1187:16, 1190:21, 1191:17, 1192:6, 1193:5, 1193:10, 1194:4, 1202:21, 1203:5, 1204:4, 1207:18, 1208:1, 1208:4, 1208:6, 1211:16, 1211:21, 1212:4, 1213:19, 1213:21, 1219:19, 1219:21, 1220:2, 1221:6, 1221:18, 1221:22, 1221:24, 1224:14, 1224:18, 1225:19,

1226:11, 1228:2, 1230:24, 1234:7, 1234:10, 1234:22, 1235:1, 1236:19, 1236:24, 1237:2, 1237:11, 1240:17, 1243:13, 1244:9, 1245:1, 1251:19, 1251:21, 1254:22, 1257:3, 1258:18, 1260:19, 1264:23, 1265:5, 1265:6, 1265:7, 1270:14, 1278:13, 1280:21, 1292:6
THC [7] - 1219:13, 1219:18, 1220:13, 1220:14, 1234:1, 1245:17, 1245:23
THE [229] - 1031:2, 1031:13, 1031:20, 1032:2, 1032:6, 1032:11, 1032:18, 1032:20, 1032:24, 1033:3, 1033:6, 1033:9, 1033:21, 1034:1, 1034:5, 1034:17, 1035:22, 1036:3, 1036:7, 1036:12, 1037:6, 1038:9, 1038:12, 1038:22, 1039:2, 1039:6, 1039:13, 1039:19, 1039:24, 1040:4, 1040:8, 1040:10, 1040:13, 1041:8, 1041:15, 1041:19, 1042:13, 1042:23, 1043:5, 1043:12, 1043:20, 1043:25, 1044:4, 1044:7, 1044:12, 1044:17, 1044:21, 1045:3, 1045:25, 1046:3, 1046:7, 1047:5, 1047:8, 1047:14, 1047:18, 1047:20, 1047:24, 1048:17, 1048:19, 1048:24, 1049:5, 1049:15, 1049:22, 1049:25, 1050:3, 1050:22, 1051:1, 1051:5, 1051:13, 1051:20, 1051:25, 1052:14, 1052:18, 1052:20, 1052:25, 1053:5, 1053:17, 1053:22, 1054:3, 1054:10, 1054:12, 1054:15, 1054:18, 1054:20, 1055:1, 1055:8, 1055:15, 1055:17, 1055:22, 1056:2, 1056:5, 1056:10, 1056:14, 1056:17, 1056:21, 1056:24, 1057:1, 1059:5, 1059:18, 1063:16, 1068:4, 1069:11, 1071:7, 1071:8, 1071:16, 1071:20, 1072:4, 1072:9, 1072:14, 1072:23, 1073:7, 1073:12, 1073:14, 1073:17, 1076:6, 1082:21, 1084:18, 1094:17, 1096:19, 1096:21, 1098:17, 1099:2, 1103:21, 1103:25, 1105:1, 1106:2, 1111:4, 1111:6, 1111:7, 1111:8, 1112:18, 1112:20, 1112:23, 1113:1, 1113:4, 1113:6, 1113:12, 1113:15, 1113:20, 1113:24, 1114:3, 1114:8, 1114:12, 1114:16, 1114:20, 1114:25, 1115:4, 1115:8, 1115:9, 1115:17, 1115:21, 1163:18, 1163:21, 1163:24, 1164:6, 1177:19, 1177:22, 1177:25, 1178:6, 1178:14, 1178:18, 1180:2, 1185:14, 1188:13, 1194:16, 1222:16, 1222:19, 1222:22, 1223:1, 1241:2, 1241:6, 1241:9, 1241:12, 1241:15, 1241:17, 1241:21, 1242:3, 1242:7, 1242:10, 1242:12, 1242:19, 1242:22, 1250:17, 1252:15, 1252:19, 1253:1, 1253:9, 1253:13, 1253:17, 1253:19, 1253:20, 1253:21, 1253:23, 1253:24, 1254:3, 1254:4, 1259:25, 1260:2, 1260:3, 1262:15, 1262:18, 1262:21, 1262:25, 1263:4, 1263:11, 1263:14, 1263:16, 1263:22, 1263:24, 1268:17, 1268:20,

1272:1, 1272:4, 1272:6, 1292:13, 1292:17, 1292:23, 1293:3, 1293:8, 1293:11, 1293:15, 1293:19, 1293:23, 1294:2, 1294:5, 1294:8, 1294:10, 1294:15, 1294:20
theft [4] - 1057:11, 1058:18, 1058:20, 1059:6
themselves [6] - 1152:11, 1154:3, 1171:24, 1172:21, 1201:18, 1283:16
therapeutic [30] - 1135:15, 1135:16, 1135:17, 1135:21, 1136:3, 1136:6, 1142:18, 1145:23, 1145:25, 1147:11, 1150:1, 1152:1, 1152:2, 1155:21, 1156:5, 1156:7, 1156:9, 1156:17, 1156:24, 1165:1, 1165:8, 1179:8, 1181:11, 1184:23, 1235:15, 1246:21, 1251:4, 1251:5, 1251:14
therapist [23] - 1102:7, 1102:8, 1102:14, 1102:18, 1102:19, 1112:11, 1141:14, 1141:15, 1141:25, 1142:1, 1142:3, 1142:6, 1142:7, 1142:10, 1142:13, 1142:16, 1142:21, 1252:6, 1252:9, 1252:11, 1294:9
therapists [2] - 1107:15, 1107:16
therapy [28] - 1061:7, 1061:10, 1091:4, 1091:6, 1091:10, 1095:5, 1096:9, 1102:2, 1129:18, 1129:20, 1129:21, 1130:4, 1130:7, 1132:4, 1132:6, 1132:8, 1132:14, 1132:17, 1133:2, 1133:12, 1133:13, 1141:15, 1141:18, 1156:2, 1170:8, 1170:10, 1225:5
thereafter [3] - 1265:16, 1284:12, 1289:7
therefore [5] - 1062:14, 1067:3, 1184:23, 1185:2, 1246:22
they's [1] - 1161:2
they've [13] - 1126:8, 1131:24, 1135:10, 1154:2, 1154:5, 1192:10, 1201:5, 1209:17, 1213:13, 1226:17, 1233:22, 1291:14
thin [1] - 1091:3
thinking [6] - 1051:4, 1148:13, 1168:4, 1170:18, 1175:12, 1238:2
thinks [1] - 1044:16
third [8] - 1078:6, 1078:8, 1122:14, 1130:22, 1238:21, 1247:12, 1280:5, 1280:15
Third [1] - 1059:23
third-party [1] - 1238:21
thoughts [1] - 1175:2
thousands [1] - 1036:16
threat [1] - 1183:12
threatening [1] - 1223:18
three [44] - 1048:3, 1049:14, 1050:18, 1107:18, 1108:12, 1117:16, 1117:24, 1128:22, 1132:5, 1139:11, 1151:5, 1151:9, 1151:18, 1159:22, 1170:4, 1173:8, 1173:11, 1173:20, 1177:2, 1180:5, 1215:25, 1228:8, 1228:12, 1228:16, 1228:18, 1228:23, 1229:9, 1230:4, 1250:10, 1279:6, 1279:13, 1280:4, 1280:18, 1281:8, 1281:11, 1281:13, 1286:7, 1287:24, 1288:5,

<p>1288:6, 1294:1 three-month [1] - 1230:4 threshold [1] - 1134:14 throat [1] - 1244:5 throughout [2] - 1167:23, 1181:6 thumbing [2] - 1061:24, 1092:21 thyroid [1] - 1162:4 ticket [1] - 1125:2 tight [5] - 1091:6, 1095:11, 1101:2, 1166:7, 1201:10 tighten [1] - 1176:1 timeframe [4] - 1045:21, 1193:19, 1195:6, 1219:8 timing [2] - 1050:16, 1237:23 tingling [2] - 1090:20, 1206:5 tissue's [1] - 1173:7 Title [1] - 1255:21 title [1] - 1119:6 titled [1] - 1223:7 today [18] - 1036:11, 1067:9, 1078:15, 1091:3, 1109:21, 1124:24, 1128:23, 1144:19, 1144:25, 1159:19, 1171:17, 1172:20, 1252:24, 1255:1, 1255:10, 1255:13, 1257:7 today's [3] - 1192:17, 1192:22, 1280:13 toe [10] - 1124:19, 1124:20, 1124:22, 1125:5, 1125:6, 1125:15, 1125:16, 1125:17 together [8] - 1133:8, 1158:4, 1158:24, 1197:9, 1211:5, 1226:4, 1228:22, 1255:5 tolerance [2] - 1131:1, 1233:17 tomorrow [2] - 1292:18, 1293:9 tonight [1] - 1125:2 took [9] - 1062:21, 1065:10, 1076:16, 1081:6, 1088:10, 1187:1, 1187:8, 1217:4, 1230:2 tool [14] - 1063:25, 1126:8, 1126:14, 1126:16, 1126:17, 1145:18, 1147:20, 1147:24, 1148:25, 1160:23, 1237:4, 1245:13, 1274:24 tools [10] - 1052:12, 1053:15, 1111:23, 1126:18, 1129:3, 1144:18, 1151:20, 1154:22, 1172:3, 1182:3 top [6] - 1032:16, 1080:15, 1123:23, 1202:5, 1230:17, 1280:12 topic [4] - 1085:25, 1124:10, 1224:23, 1236:21 topics [3] - 1085:23, 1086:5, 1123:3 tops [1] - 1107:18 total [4] - 1049:14, 1148:12, 1186:5, 1280:4 totally [2] - 1128:3, 1142:2 towards [2] - 1129:2, 1129:4 track [4] - 1198:13, 1199:3, 1199:19, 1248:7 tracked [3] - 1213:4, 1221:24, 1231:9 tracks [1] - 1196:25 trading [4] - 1184:17, 1184:18, 1188:25 traffic [2] - 1031:4</p>	<p>tragic [2] - 1172:8, 1172:9 trail [1] - 1042:16 trained [6] - 1102:7, 1102:13, 1102:18, 1142:1, 1142:2, 1142:16 training [8] - 1102:21, 1103:13, 1116:17, 1117:25, 1121:24, 1142:13, 1266:3, 1266:8 trains [1] - 1175:16 tranquilizer [2] - 1158:7, 1159:16 tranquilizers [1] - 1223:21 transcript [1] - 1295:4 trauma [5] - 1124:20, 1125:6, 1125:16, 1161:18, 1161:19 traumatic [3] - 1134:3, 1134:4, 1166:6 traveled [1] - 1182:20 treading [2] - 1072:2, 1073:10 treat [17] - 1037:20, 1074:24, 1106:6, 1118:19, 1129:6, 1133:7, 1144:4, 1145:21, 1163:15, 1170:13, 1190:4, 1191:13, 1204:12, 1205:2, 1219:23, 1248:17, 1249:8 treated [11] - 1033:12, 1037:21, 1037:24, 1037:25, 1110:22, 1121:21, 1145:12, 1189:17, 1197:19, 1197:22, 1249:11 treating [12] - 1037:1, 1075:3, 1121:22, 1129:8, 1131:15, 1132:10, 1190:2, 1190:8, 1204:23, 1218:4, 1245:14 treatise [1] - 1034:23 treatises [6] - 1033:10, 1034:11, 1034:22, 1035:2, 1035:6 treatment [82] - 1040:17, 1042:3, 1042:4, 1045:11, 1046:21, 1064:22, 1065:12, 1068:9, 1078:23, 1078:25, 1079:8, 1081:11, 1095:6, 1101:10, 1121:19, 1121:20, 1121:24, 1122:5, 1128:18, 1128:25, 1129:11, 1129:13, 1129:14, 1129:15, 1129:17, 1130:9, 1131:14, 1131:19, 1131:20, 1133:14, 1135:2, 1135:18, 1136:3, 1140:16, 1146:1, 1147:6, 1147:24, 1148:4, 1148:11, 1149:21, 1152:6, 1153:1, 1154:9, 1155:11, 1156:9, 1156:12, 1163:12, 1163:13, 1166:16, 1169:24, 1170:3, 1170:4, 1170:11, 1171:13, 1173:16, 1173:23, 1173:24, 1174:2, 1174:6, 1174:8, 1181:25, 1182:13, 1183:7, 1183:23, 1201:5, 1204:16, 1209:3, 1213:17, 1214:3, 1214:7, 1214:18, 1216:6, 1216:12, 1221:4, 1221:6, 1227:19, 1234:6, 1235:20, 1239:13, 1248:18, 1248:22 treatments [27] - 1075:15, 1094:23, 1094:25, 1126:25, 1129:10, 1131:23, 1132:1, 1138:9, 1138:10, 1138:22, 1170:8, 1171:15, 1173:22, 1184:22, 1190:13, 1197:25, 1208:13, 1216:16, 1216:19, 1218:2, 1226:8, 1226:15, 1226:17, 1227:7, 1236:2, 1243:23, 1244:6 treats [2] - 1133:1, 1210:5 trend [6] - 1150:12, 1151:5, 1157:24</p>	<p>1158:3, 1180:23, 1181:6 trial [4] - 1050:15, 1123:10, 1123:16, 1256:21 trials [2] - 1123:8, 1123:9 tried [3] - 1132:1, 1135:10 trip [1] - 1287:25 trips [1] - 1287:24 trouble [4] - 1134:10, 1288:17, 1289:5, 1293:24 true [14] - 1067:14, 1067:19, 1074:5, 1096:12, 1176:8, 1187:6, 1190:23, 1195:7, 1197:1, 1217:12, 1237:8, 1238:24, 1240:22, 1293:10 truly [2] - 1135:8, 1135:14 truth [7] - 1115:6, 1115:7, 1254:1, 1254:2, 1271:24 truthful [9] - 1049:3, 1081:25, 1082:3, 1083:25, 1084:5, 1107:2, 1109:19, 1257:13, 1277:10 truthfully [3] - 1255:12, 1257:6, 1277:8 try [12] - 1042:22, 1095:13, 1129:3, 1137:8, 1149:6, 1161:7, 1162:21, 1164:12, 1166:10, 1172:3, 1225:9, 1293:5 trying [21] - 1041:12, 1041:21, 1041:22, 1045:21, 1052:3, 1053:5, 1077:11, 1081:11, 1120:6, 1122:3, 1136:4, 1136:6, 1156:10, 1156:11, 1162:12, 1163:25, 1172:6, 1178:7, 1191:7, 1205:1, 1263:11 Tuesday [1] - 1050:6 turn [3] - 1164:8, 1164:16, 1202:3 turned [2] - 1058:10, 1194:1 turning [2] - 1164:4, 1164:7 turpitude [2] - 1058:25, 1059:17 tweak [3] - 1064:21, 1068:24, 1093:22 twice [3] - 1112:6, 1112:13, 1267:2 Twillman [1] - 1052:9 twisted [1] - 1200:8 two [52] - 1040:3, 1042:21, 1043:18, 1048:3, 1048:14, 1049:14, 1050:18, 1051:7, 1051:13, 1052:6, 1053:22, 1057:10, 1058:16, 1084:2, 1089:24, 1095:25, 1096:1, 1096:4, 1098:20, 1099:7, 1101:15, 1107:18, 1108:5, 1119:22, 1119:24, 1121:1, 1132:5, 1139:21, 1148:12, 1153:4, 1155:20, 1178:21, 1180:5, 1192:19, 1197:14, 1204:21, 1219:7, 1228:12, 1228:22, 1229:12, 1229:22, 1268:13, 1268:15, 1270:2, 1270:3, 1274:3, 1274:4, 1276:6, 1276:16, 1283:2 two-part [1] - 1192:19 two-years [1] - 1276:16 type [16] - 1093:24, 1129:14, 1134:9, 1134:10, 1141:14, 1161:18, 1161:19, 1165:24, 1166:15, 1167:16, 1170:11, 1171:13, 1267:22, 1267:23, 1276:2, 1290:8 types [5] - 1129:13, 1158:23, 1170:12, 1170:17, 1187:18 typewritten [1] - 1216:13</p>
--	--	---

<p>typical [6] - 1087:12, 1089:18, 1108:7, 1108:8, 1133:9, 1142:6</p> <p>typically [4] - 1133:5, 1155:1, 1214:24, 1281:8</p> <p>typo [1] - 1223:14</p> <p>typos [1] - 1223:16</p>	<p>1036:1, 1042:1, 1048:12, 1052:1, 1054:2, 1057:2, 1065:3, 1065:21, 1066:8, 1073:1, 1098:7, 1109:3, 1113:19, 1114:22, 1115:17, 1121:5, 1125:5, 1132:5, 1143:21, 1146:23, 1146:25, 1151:7, 1151:24, 1154:23, 1155:1, 1155:6, 1161:4, 1164:5, 1164:7, 1164:8, 1171:15, 1176:1, 1177:23, 1178:8, 1178:14, 1179:5, 1189:13, 1189:15, 1193:1, 1196:10, 1196:19, 1198:10, 1202:5, 1206:7, 1238:22, 1250:21, 1251:16, 1259:23, 1260:3, 1264:3, 1264:18, 1266:21, 1273:4, 1278:8, 1278:10, 1278:11, 1278:21, 1292:19, 1293:19, 1293:22, 1293:23</p> <p>up-to-date [1] - 1193:1</p> <p>upstairs [4] - 1061:13, 1091:13, 1092:4, 1164:11</p> <p>Urban [3] - 1270:1, 1270:2, 1270:3</p> <p>urinalysis [5] - 1274:12, 1274:15, 1274:18, 1274:19, 1275:3</p> <p>urine [26] - 1081:16, 1101:12, 1101:16, 1135:13, 1136:14, 1139:14, 1139:16, 1139:20, 1139:21, 1139:22, 1146:3, 1146:4, 1146:7, 1146:22, 1179:11, 1179:15, 1184:5, 1193:22, 1219:13, 1234:13, 1234:19, 1245:24, 1246:6, 1246:7, 1275:6</p> <p>uses [2] - 1096:6, 1101:6</p> <p>utilize [1] - 1281:5</p> <p>utilized [1] - 1144:19</p>	<p>video [9] - 1047:11, 1081:22, 1084:25, 1085:8, 1085:22, 1092:10, 1092:18, 1107:21</p> <p>videos [1] - 1091:17</p> <p>view [2] - 1038:17, 1142:24</p> <p>vigilance [1] - 1134:3</p> <p>village [1] - 1264:18</p> <p>violating [1] - 1120:25</p> <p>violation [5] - 1046:24, 1121:4, 1121:5, 1250:1, 1250:5</p> <p>visit [44] - 1047:12, 1047:16, 1060:21, 1063:12, 1063:20, 1064:9, 1066:16, 1067:16, 1069:15, 1070:9, 1071:11, 1071:14, 1072:7, 1073:21, 1074:6, 1074:16, 1076:9, 1076:17, 1077:22, 1078:11, 1078:12, 1084:21, 1087:12, 1089:20, 1093:19, 1094:13, 1099:19, 1104:19, 1107:17, 1108:8, 1181:21, 1199:3, 1207:9, 1214:22, 1215:9, 1229:5, 1229:7, 1229:10, 1281:12, 1281:18, 1288:6</p> <p>visited [2] - 1063:19, 1274:5</p> <p>visits [19] - 1061:25, 1070:18, 1071:2, 1071:6, 1072:5, 1086:14, 1087:23, 1093:13, 1093:15, 1094:14, 1096:8, 1103:6, 1151:7, 1214:25, 1228:16, 1228:22, 1229:3, 1229:22, 1230:16</p> <p>vitae [2] - 1115:12, 1115:19</p> <p>vitals [2] - 1091:24, 1093:17</p> <p>vocational [1] - 1103:9</p> <p>volume [1] - 1262:10</p> <p>voluntarily [1] - 1257:9</p> <p>volunteered [1] - 1290:23</p> <p>Voss [3] - 1269:5, 1269:7, 1269:8</p>
<p>U</p>	<p>V</p>	<p>W</p>
<p>UDT [2] - 1275:7, 1275:9</p> <p>ugly [1] - 1051:19</p> <p>ultimate [2] - 1044:21, 1259:22</p> <p>ultimately [4] - 1053:14, 1191:24, 1203:13, 1203:14</p> <p>umpire [1] - 1050:11</p> <p>unable [1] - 1294:13</p> <p>uncle [1] - 1265:2</p> <p>unclear [1] - 1141:24</p> <p>uncommon [1] - 1167:18</p> <p>undated [1] - 1083:8</p> <p>under [31] - 1078:21, 1079:8, 1099:16, 1141:17, 1147:7, 1165:22, 1204:4, 1244:11, 1244:12, 1245:1, 1245:3, 1245:22, 1246:8, 1248:12, 1249:19, 1251:1, 1251:2, 1251:20, 1251:21, 1253:1, 1253:11, 1255:21, 1257:16, 1258:1, 1258:9, 1258:25, 1260:22, 1271:22, 1278:13, 1280:20, 1282:13</p> <p>undercover [1] - 1081:21</p> <p>undergo [5] - 1067:20, 1075:13, 1075:22, 1076:9, 1076:21</p> <p>undergoing [2] - 1077:9, 1078:20</p> <p>undergraduate [1] - 1117:1</p> <p>underlying [2] - 1210:1, 1210:6</p> <p>understood [5] - 1062:14, 1067:1, 1081:10, 1095:4, 1162:24</p> <p>underway [1] - 1114:13</p> <p>unemployed [1] - 1172:8</p> <p>unfortunately [2] - 1085:12, 1144:3</p> <p>unit [1] - 1164:10</p> <p>United [14] - 1115:2, 1122:17, 1253:15, 1255:11, 1255:17, 1255:22, 1256:1, 1256:24, 1257:19, 1257:23, 1257:24, 1258:7, 1258:25, 1259:8</p> <p>units [9] - 1046:22, 1098:4, 1181:2, 1181:4, 1249:25, 1250:15, 1250:21, 1251:16, 1262:11</p> <p>University [11] - 1116:22, 1117:3, 1117:4, 1117:10, 1117:22, 1119:3, 1258:17, 1258:18, 1265:9, 1265:13</p> <p>unless [4] - 1039:9, 1178:9, 1200:14, 1219:24</p> <p>unlicensed [2] - 1252:6, 1252:9</p> <p>unnecessary [1] - 1048:6</p> <p>unreasonable [1] - 1181:6</p> <p>unrecognized [1] - 1177:9</p> <p>unstable [3] - 1171:22, 1176:22, 1177:6</p> <p>untrained [2] - 1252:1</p> <p>unusual [2] - 1225:14, 1227:21</p> <p>unusually [1] - 1182:20</p> <p>up [66] - 1031:2, 1031:4, 1031:5</p>	<p>V-E-R-E-L-A-N [1] - 1288:25</p> <p>vaguely [2] - 1063:14, 1240:1</p> <p>valid [1] - 1169:10</p> <p>Valium [5] - 1158:2, 1158:18, 1159:13, 1159:16, 1160:4</p> <p>variable [1] - 1163:4</p> <p>variations [1] - 1228:21</p> <p>varied [2] - 1207:9, 1229:17</p> <p>various [4] - 1060:23, 1063:25, 1171:6, 1191:19</p> <p>vast [3] - 1141:1, 1170:12, 1182:9</p> <p>vehicle [2] - 1130:24, 1197:22</p> <p>vehicles [2] - 1268:14, 1268:15</p> <p>vendor [1] - 1195:9</p> <p>verbal [1] - 1143:10</p> <p>verbally [1] - 1044:2</p> <p>Verelan [2] - 1288:23, 1288:25</p> <p>verified [1] - 1274:8</p> <p>verify [3] - 1135:8, 1161:21, 1161:23</p> <p>versa [2] - 1155:6, 1200:24</p> <p>version [4] - 1159:6, 1159:10, 1210:21, 1237:24</p> <p>versus [5] - 1054:1, 1131:3, 1134:16, 1224:24, 1224:25</p> <p>vice [2] - 1155:6, 1200:23</p> <p>victim [1] - 1175:9</p> <p>victimization [1] - 1175:7</p>	<p>waiting [8] - 1085:17, 1085:20, 1086:7, 1088:12, 1088:14, 1108:23, 1203:14, 1252:19</p> <p>walk [5] - 1092:3, 1173:1, 1201:4, 1202:5, 1214:10</p> <p>walked [1] - 1202:8</p> <p>walking [2] - 1213:14, 1273:21</p> <p>wants [4] - 1164:3, 1208:6, 1215:12, 1251:10</p> <p>warmup [2] - 1201:13, 1201:15</p> <p>warning [1] - 1137:6</p> <p>warrant [1] - 1264:5</p> <p>watch [1] - 1234:5</p> <p>water [4] - 1212:11, 1243:3, 1260:1</p> <p>Wayne [1] - 1229:20</p> <p>ways [15] - 1045:1, 1122:1, 1129:8, 1132:10, 1144:19, 1148:12, 1153:18, 1153:21, 1153:24, 1170:18, 1175:11, 1188:8, 1190:2, 1227:15, 1233:14</p> <p>weakness [1] - 1138:7</p> <p>website [1] - 1120:5</p> <p>Wednesday [1] - 1294:18</p> <p>week [2] - 1071:17, 1071:21</p> <p>weekend [3] - 1033:25, 1055:21, 1056:24</p>

<p>weekly ^[1] - 1285:18</p> <p>weeks ^[7] - 1095:25, 1096:1, 1096:4, 1125:15, 1131:8, 1285:10, 1288:11</p> <p>weight ^[1] - 1199:13</p> <p>weight ^[17] - 1066:1, 1069:7, 1069:8, 1073:22, 1074:5, 1074:6, 1074:11, 1074:13, 1088:11, 1090:23, 1090:24, 1135:24, 1136:1, 1136:4, 1199:21, 1200:2</p> <p>welfare ^[1] - 1183:12</p> <p>west ^[1] - 1269:17</p> <p>western ^[1] - 1130:18</p> <p>wet ^[1] - 1164:9</p> <p>whack ^[3] - 1124:19, 1125:5, 1125:15</p> <p>whacking ^[1] - 1124:22</p> <p>Wheeler ^[2] - 1075:25, 1077:12</p> <p>whereabouts ^[1] - 1139:13</p> <p>white ^[1] - 1234:17</p> <p>whole ^[7] - 1112:6, 1112:13, 1115:6, 1125:7, 1170:12, 1171:23, 1254:1</p> <p>wholesaler ^[1] - 1261:25</p> <p>Wichita ^[2] - 1123:14, 1123:15</p> <p>willful ^[6] - 1044:10, 1044:19, 1045:2, 1045:4, 1045:10, 1045:20</p> <p>willfully ^[1] - 1262:2</p> <p>Williams ^[7] - 1082:12, 1082:25, 1083:8, 1083:14, 1083:20, 1084:1, 1084:17</p> <p>win ^[1] - 1125:9</p> <p>wind ^[1] - 1166:12</p> <p>wings ^[2] - 1200:9, 1200:10</p> <p>winning ^[1] - 1125:7</p> <p>wise ^[1] - 1243:17</p> <p>wisely ^[1] - 1050:9</p> <p>wish ^[1] - 1091:3</p> <p>wishes ^[1] - 1043:10</p> <p>withdraw ^[1] - 1157:2</p> <p>withdrawal ^[2] - 1154:7, 1248:18</p> <p>withdrawals ^[2] - 1153:17, 1153:19</p> <p>withheld ^[1] - 1082:6</p> <p>witness ^[47] - 1031:8, 1031:15, 1042:11, 1042:16, 1042:17, 1045:25, 1047:9, 1048:3, 1048:4, 1049:3, 1050:20, 1051:21, 1052:9, 1053:24, 1054:16, 1054:19, 1054:20, 1055:17, 1055:18, 1056:7, 1056:11, 1069:10, 1076:2, 1076:5, 1082:19, 1096:18, 1112:23, 1113:8, 1114:22, 1115:1, 1123:6, 1123:9, 1123:16, 1178:9, 1222:17, 1241:1, 1241:13, 1241:15, 1241:19, 1242:19, 1252:3, 1252:16, 1253:14, 1257:6, 1262:14, 1293:13</p> <p>WITNESS ^[9] - 1071:8, 1111:6, 1111:8, 1112:20, 1115:8, 1253:20, 1253:23, 1254:3, 1260:2</p> <p>witnesses ^[15] - 1035:5, 1035:6, 1036:15, 1051:1, 1051:14, 1052:3, 1052:6, 1053:22, 1055:20, 1113:19, 1114:13, 1253:6, 1293:9, 1294:1, 1294:11</p> <p>woke ^[1] - 1143:21</p> <p>word ^[6] - 1035:20, 1100:25, 1113:4,</p>	<p>1130:13, 1213:19, 1230:6</p> <p>words ^[16] - 1036:23, 1045:8, 1072:16, 1081:3, 1099:11, 1124:15, 1131:17, 1136:25, 1187:12, 1190:9, 1192:3, 1210:8, 1211:19, 1245:5, 1253:4, 1288:3</p> <p>Workers' ^[3] - 1120:14, 1120:20, 1197:19</p> <p>works ^[2] - 1158:7, 1225:6</p> <p>world ^[1] - 1219:17</p> <p>worse ^[6] - 1088:23, 1092:7, 1092:19, 1169:15, 1176:2, 1247:24</p> <p>worst ^[3] - 1064:5, 1143:18, 1207:3</p> <p>Worth ^[4] - 1123:17, 1265:2, 1265:7, 1265:8</p> <p>wound ^[1] - 1166:7</p> <p>wounds ^[1] - 1039:21</p> <p>wrap ^[1] - 1177:23</p> <p>write ^[23] - 1097:21, 1101:23, 1107:19, 1150:17, 1153:7, 1209:18, 1212:22, 1245:20, 1279:6, 1279:13, 1279:22, 1279:23, 1279:25, 1280:4, 1280:7, 1280:14, 1280:16, 1280:18, 1281:18, 1282:25, 1283:2, 1283:11</p> <p>writes ^[1] - 1035:7</p> <p>writing ^[8] - 1080:4, 1090:7, 1097:23, 1100:5, 1155:13, 1231:14, 1262:3</p> <p>written ^[17] - 1033:10, 1033:12, 1082:16, 1140:5, 1143:10, 1154:16, 1205:16, 1209:4, 1235:23, 1259:20, 1261:7, 1261:12, 1261:24, 1262:11, 1270:21, 1281:13, 1288:1</p> <p>wrote ^[7] - 1071:24, 1100:7, 1100:9, 1157:17, 1208:25, 1234:17, 1280:9</p>	<p>yoga ^[1] - 1170:9</p> <p>York ^[2] - 1264:18, 1264:20</p> <p>you-all ^[1] - 1042:15</p> <p>yourself ^[4] - 1048:6, 1217:10, 1217:13, 1286:2</p>
		Z
	<p style="text-align: center;">X</p> <p>X-ray ^[3] - 1101:25, 1145:10, 1276:11</p> <p>X-rays ^[2] - 1226:25, 1274:2</p> <p>Xanax ^[4] - 1069:24, 1158:3, 1159:12, 1159:17</p> <p style="text-align: center;">Y</p> <p>y'all ^[7] - 1031:3, 1031:7, 1031:16, 1086:17, 1088:5, 1090:23, 1292:19</p> <p>year ^[19] - 1062:24, 1116:24, 1117:5, 1117:15, 1117:24, 1117:25, 1120:17, 1123:17, 1189:17, 1219:7, 1265:12, 1265:14, 1265:20, 1265:24, 1266:17, 1267:14, 1269:12, 1277:12, 1277:25</p> <p>years ^[33] - 1047:25, 1058:17, 1062:23, 1101:14, 1101:15, 1117:16, 1118:22, 1120:16, 1120:18, 1120:21, 1128:23, 1130:6, 1133:21, 1139:11, 1144:22, 1161:12, 1167:8, 1167:19, 1167:23, 1168:8, 1168:21, 1172:9, 1215:25, 1266:12, 1267:5, 1269:18, 1274:3, 1274:4, 1276:6, 1276:7, 1276:12, 1276:16</p> <p>yesterday ^[1] - 1031:18</p>	<p>zero ^[2] - 1083:18, 1233:17</p>